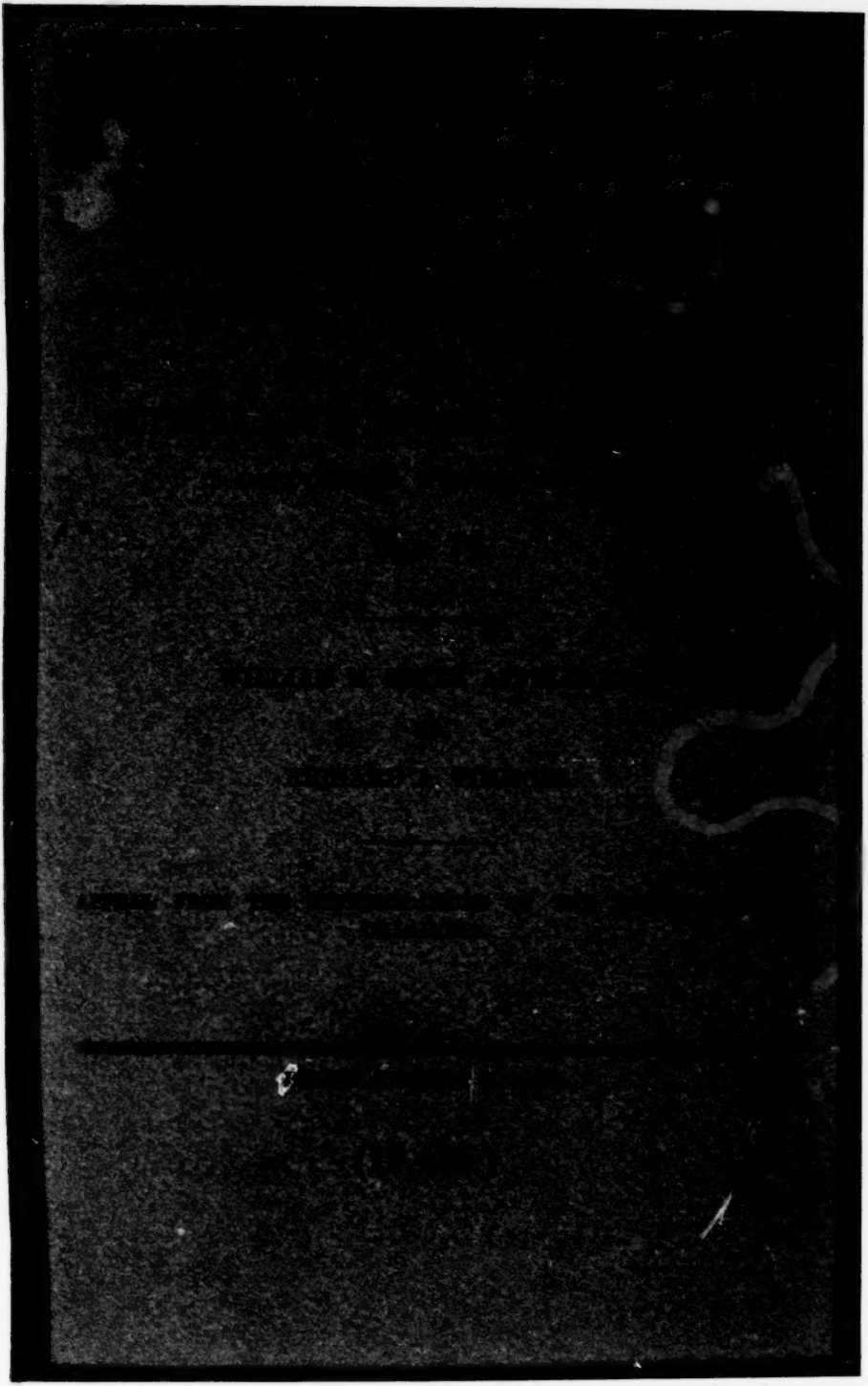

(19,435.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 74.

WILLIAM M. ESTES, APPELLANT,

vs.

RICHARD A. TIMMONS.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to Richard A. Timmons and J. H. Everest, his attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the city of Washington, in the District of Columbia, on the 28th day of July, 1904, pursuant to an order allowing an appeal in the clerk's office of the supreme court of the Territory of Oklahoma, in that certain action, No. 1195, in which William M. Estes is complainant and appellant, and you, the said Richard A. Timmons is respondent and appellee, to show cause, if any there by, why the decree rendered against said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness, the Honorable John H. Burford, chief justice of the supreme court of the Territory of Oklahoma, this 28th day of June, A. D. 1904.

JOHN H. BURFORD,
Chief Justice.

[Seal Supreme Court, Territory of Oklahoma.]

Attest: BENJ. F. HEGLER,
Clerk Supreme Court, O. T.

UNITED STATES OF AMERICA,
Territory of Oklahoma, } *ss:*

I, J. M. Berry hereby certify and swear that I served the within and above citation on Richard A. Timmons, on the 29th day of June, 1904, at the city of Shawnee, in the Territory of Oklahoma, by then and there delivering to the said Richard A. Timmons, a true copy of the within, above and foregoing citation, and that I was then and am now a deputy sheriff of Pottawatomie county Oklahoma Territory, duly commissioned and qualified.

Dated at Shawnee in the Territory of Oklahoma, this 30th day of June, 1904.

J. M. BERRY,
Dep. Sheriff.

Subscribed and sworn to before me this 2nd day of July A. D. 1904.

[Seal of H. A. Basham, Notary Public, Pottawatomie Co., O. T.]

H. A. BASHAM,
Notary Public.

My commission expires Oct. 23, 1907.

b [Endorsed:] 1195 In the supreme court of the Territory of Oklahoma. William M. Estes, complainant and appel-
1—74

lant, *vs.* Richard A. Timmons, respondent and appellee. Citation and return. Filed July 4, 1904, Benj. F. Hegler, clerk supreme court.

TERRITORY OF OKLAHOMA, Oklahoma County, } *ss:*

I, J. H. Everest, attorney of record of the within named respondent Richard A. Timmons, hereby accept service of the within and foregoing citation this 28th day of July A. D. 1904.

J. H. EVEREST,
Attorney for Richard A. Timmons.

Filed July 4, 1904.
BENJ. F. HEGLER,
Clerk Sup. Ct.

1 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error, Complainant,
vs.
RICHARD A. TIMMONS, Defendant in Error, Respondent. } No. 1195.

Petition for Allowance of Appeal.

The above named plaintiff in error and complainant conceiving himself aggrieved by the order and decree made and entered in the above entitled cause on the 6" day of June A. D. 1903, wherein and whereby it was ordered and adjudged and decreed that the judgment of the district court of Pottawatomie county, Oklahoma Territory, sustaining the demurrer to the petition in the case in the court below, be sustained and the cause dismissed and for costs, was affirmed by said supreme court, and said cause dismissed at the cost of said plaintiff in error; does hereby appeal from the said order, judgment and decree of June 6", 1903, to the Supreme Court of the United States, and he prays that this appeal may be allowed, and a transcript of the record, papers and proceedings upon which said order, judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, including Exhibit "A" attached hereto.

G. W. ADAMS,
Attorney for Complainant and Plaintiff in Error.

The above named plaintiff in error also asks that an order be made fixing the amount of security which said complainant shall give and furnish upon such appeal and upon the giving of
2 such security all further proceedings in this court be superseded and stayed until the determination of the said appeal, by the Supreme Court of the United States.

And your petitioner will ever pray.

G. W. ADAMS,
Attorney for Petitioner, Plaintiff in Error.

EXHIBIT "A."

TERRITORY OF OKLAHOMA,
County of Pottawatomie, } ss:

G. W. Adams of lawful age, being first duly sworn on his oath, deposes and says:

He is the attorney of record for the above named petitioner, and plaintiff in error, William M. Estes, that he knows the value of the real estate involved in the above entitled action and knew the same when said action was commenced in the district court of Pottawatomie county, Oklahoma Territory.

Affiant further says that the value of said property involved in said action was at the commencement of said action, and is now more than six thousand (6,000.00) dollars.

G. W. ADAMS.

Subscribed in my presence and sworn to this 22 day of August, 1903.

[SEAL.]

A. H. THOMAS,
Notary Public.

My commission expires July 6, 1907.

Filed June 2, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court.

Said petition is endorsed: 1195. In the supreme court of the Territory of Oklahoma. William M. Estes, plaintiff in error, *vs.* Richard A. Timmons, defendant in error—Petition for allowance of appeal, and affidavit. Filed June 2, 1904, Benj. F. Hegler, clerk supreme court.

3 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error, Complainant,
vs.
RICHARD A. TIMMONS, Defendant in Error, Respondent.

Assignment of Errors on Appeal to the United States Supreme Court.

Comes now the above named plaintiff in error, complainant, and files the following assignment of errors, upon which he will rely on his appeal to the Supreme Court of the United States, to wit:

First. The said supreme court of Oklahoma Territory erred in affirming the judgment of the lower court, sustaining the demurrer of the defendant to the petition of the plaintiff filed therein and dismissing the plaintiff's action.

Second. The said supreme court erred in refusing to reverse the

decision of the lower court, sustaining the demurrer of the defendant to the plaintiff's petition, and in refusing to decide that the plaintiff's petition stated facts sufficient to constitute a *course* of action against the defendant.

Third. The said supreme court erred in deciding that the plaintiff's petition, in the court below, did not state facts sufficient to constitute a *course* of acton against the defendant.

Fourth. The said court erred in deciding that the decision of the Land Department was conclusive, final and binding on the plaintiff, upon the facts alleged and set forth in plaintiff's petition.

4 Wherefore, the plaintiff in error in said court and complainant herein prays that the judgment and decree of the supreme court of the Territory of Oklahoma be reversed and that the said court be directed to order the lower court to overrule the demurrer of the defendant to plaintiff's petition.

Dated at Guthrie, O. T., this first day of June, 1904.

G. W. ADAMS,
Attorney for Plaintiff in Error, Complainant.

Said assignment of errors is endorsed as follows:

1195—In the supreme court of the Territory of Oklahoma—William M. Estes, plaintiff in error, complainant, *vs.* Richard A. Timmons, defendant in error, respondent.—Assignment of error on appeal to the Supreme Court of the United States—Filed June 2, 1904—Benj. F. Hegler, clerk supreme court—G. W. Adams, attorney for complainant on appeal.

5 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error, Complainant,
vs.
RICHARD A. TIMMONS, Defendant in Error, Respondent.

Order Allowing Appeal.

On this 28 day of June, 1904, before me, J. H. Burford, chief justice of the supreme court of the Territory of Oklahoma, came on to be heard the petition of the above named plaintiff in error, William M. Estes, for an order allowing an appeal in said case from the supreme court of the Territory of Oklahoma to the Supreme Court of the United States from the final decree filed and entered herein, and it is ordered that said appeal be and the same is hereby allowed, and that a certified transcript of the record, exhibits, stipulations and all proceedings herein be forthwith transmitted to said Supreme Court of the United States.

And on petition it is further ordered, that the bond on appeal in said cause be fixed at the sum of one thousand ($1,000) dollars, the same to act as a supersedeas bond, and also a bond for costs and damages on appeal.

Dated this 28 day of June, 1904.

JNO. H. BURFORD,
Chief Justice of the Supreme Court
of the Territory of Oklahoma.

Attest:

BENJ. F. HEGLER,
[SEAL.] Clerk Supreme Court.

Said order is endorsed as follows: 1195—In the supreme court of the Territory of Oklahoma—William M. Estes, plaintiff in error, *vs.* Richard A. Timmons, defendant in error—Order allowing appeal and fixing bond—Filed June 28, 1904, Benj. F. Hegler, clerk supreme court.

6 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error, Complainant,
vs.
RICHARD A. TIMMONS, Defendant in Error, Respondent.

Bond on Appeal.

Know all men by these presents, that we, William M. Estes, doing business in the city of Shawnee, Territory of Oklahoma, as principal, and W. H. Dill and W. J. Estes, as sureties, are held and firmly bound unto Richard A. Timmons in the full and just sum of one thousand ($1,000.00) dollars, to be paid to said Richard A. Timmons, his attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators or assigns, jointly and severally, *formally* by these presents.

Sealed with our seals and dated this 30th day of June, in the year of our Lord, one thousand nine hundred and four.

Whereas, lately at a session of the supreme court of the Territory of Oklahoma, in a suit pending in the said court between William M. Estes, plaintiff in error, complainant, and Richard A. Timmons, defendant in error, respondent, a decree was rendered against the said William M. Estes, and the said William M. Estes, having obtained from the chief justice of the supreme court of the Territory of Oklahoma, an order allowing an appeal to the United States Supreme Court to reverse the decree of the aforesaid suit, and a citation directed to the said Richard A. Timmons is about to be issued citing and admonishing him to be and appear at the United States Supreme Court, to be holden at the city of Washington, in the District of Columbia.

7 Now, the condition of the above obligation is such that if the said William M. Estes, shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded

against him, if he should fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

WILLIAM M. ESTES.
W. H. DILL.
W. J. ESTES.

Witnesses:
J. H. WOODS,
H. A. BASHAM,
Of Shawnee, O. T.

Sufficiency of the sureties on the foregoing bond and said bond approved this 6th day of July, 1904.

JNO. H. BURFORD,
Chief Justice.

TERRITORY OF OKLAHOMA, } ss:
Pottawatomie County, }

W. H. Dill and W. J. Estes, of lawful age, being first duly sworn on his oath each for himself deposes and says; that he is worth and has property in said Pottawatomie county, over and above all his debts, exemptions and liabilities, in the sum set opposite his name subscribed hereto.

W. H. DILL, $5,000.00.
W. J. ESTES, $5,000.00.

Subscribed and sworn to before me this 30th day of June, 1904.
[SEAL.] H. A. BASHAM,
Notary Public.

My commission expires Oct. 23, 1907.

Endorsed: 1195—In the supreme court of the Territory of Oklahoma—William M. Estes, plaintiff in error, complainant, *vs.* Richard A. Timmons, defendant in error, respondent—Bond on appeal—Filed July 4, 1904—Benj. F. Hegler, clerk supreme court.

8 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error,
vs.
RICHARD A. TIMMONS, Defendant in Error. } Petition in Error.

The said William M. Estes, plaintiff in error, complains of the said defendant in error, Richard A. Timmons, for that the said Richard A. Timmons, at the October, A. D. 1901 term of the district court of Pottawatomie county, Territory of Oklahoma, recovered a judgment, by the consideration of said court, against the said William M. Estes, in a certain action then pending in said court, wherein the said William M. Estes was plaintiff, and the said Richard A. Timmons was defendant. The original case made, duly certified

and attested, is hereunto attached, marked "Exhibit A," and made a part of this petition in error; and the said William M. Estes alleges and avers, that there is error in the said record and proceedings, in this, to wit:

The said court erred in sustaining the demurrer of the defendant, to the petition as amended therein, and in rendering judgment sustaining said demurrer, and in dismissing said action, and in rendering judgment for the cost of said action in favor of said defendant and against said plaintiff.

Second. Said court erred in sustaining the demurrer to the amended petition and to said petition as amended.

Wherefore, the plaintiff in error prays, that said judgment so rendered may be reversed, set aside and held for naught, and that the said plaintiff in error, be restored to all rights he has lost by the rendition of such judgment, and for such further relief as to the court may seem just.

WILLIAM M. ESTES,
Plaintiff in Error,
By G. W. ADAMS,
His Attorney.

Filed Feb. 11, 1902.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, Deputy.

9 EXHIBIT "A."

TERRITORY OF OKLAHOMA, } ss:
County of Pottawatomie, }

In the District Court in and for the County and Territory Aforesaid.

WM. M. ESTES, Plaintiff,
vs.
RICHARD A. TIMMONS, Defendant. } Case Made.

10 TERRITORY OF OKLAHOMA, }
Pottawatomie County. }

In the District Court in and for said County and Territory.

WILLIAM M. ESTES, Plaintiff,
vs.
RICHARD A. TIMMONS, Defendant. } Case Made.

Be it remembered, that heretofore, to wit: on the 12th day of July, 1901, said plaintiff, William M. Estes, commenced his action against said defendant Richard A. Timmons, by filing in the district court of Pottawatomie county, Oklahoma Territory, of that date, his petition, which is in words and figures following, together with Exhibit "A," attached thereto, and made a part thereof:

11 TERRITORY OF OKLAHOMA, } ss:
County of Pottawatomie, }

In the District Court in and for the County and Territory Aforesaid.

WILLIAM M. ESTES, Plaintiff, }
vs. } Petition.
RICHARD A. TIMMONS, Defendant. }

The plaintiff, William M. Estes, alleges and avers, that immediately before and up to twelve o'clock, noon, on the 22nd day of September, A. D. 1891, the southeast quarter of section eighteen (18) in township ten (10) north of range four (4) east of Indian meridian, in Pottawatomie county, Territory of Oklahoma, was a part of the public domain of the United States of America, and was a part of the Sac and Fox Indian reservation in said Territory of Oklahoma, which was opened to settlement and homestead entry, under the homestead laws of the United States, at twelve o'clock, noon, on the 22nd day of Sept. A. D. 1891, pursuant to the act of Congress and proclamation of the President of the United States.

Second. That said plaintiff further alleges, that at the time said land was so opened to settlement and homestead entry, the said plaintiff was and ever since has been and is now duly qualified to make settlement and homestead entry of said tract of land, under said homestead laws, he during said time being a citizen, native born of the United States, over the age of 21 years and the head of a family.

Third. That said plaintiff further alleges, that immediately after 12 o'clock, noon, on September 22, A. D. 1891, and before any other qualified person under said homestead laws made settlement thereon, he settled upon said tract of land and at once commenced to
12 improve the same and immediately thereafter erected a dwelling house thereon and established his residence thereon and continued to reside thereon and occupy and improve the same, and to do and perform all of the requirements of said homestead laws of the United States, and that on the 25th day of September, A. D. 1891, plaintiff made homestead entry of said tract of land at the United States land office at Oklahoma City, in the Territory of Oklahoma.

Fourth. Plaintiff further alleges that afterwards, said defendant, Richard A Timmons, filed an affidavit of contest against plaintiff's homestead entry of said tract of land, in the United States land office at said Oklahoma City, in which defendant falsely and fraudulently alleged that he made settlement on said tract of land immediately after 12 o'clock, noon, on September 22, A. D. 1891, and, prior to the time plaintiff settled thereon as aforesaid; that after, on the 5th day of July, A. D., 1892, said contest came on to be heard before the register and receiver of said land office, and the defendant introduced his evidence in relation thereto, but no evidence of any kind or character was introduced on said hearing showing or tend-

ing to show that said defendant was qualified to make homestead entry or settlement under said homestead laws of said tract of land, and that without any testimony or evidence to show or to tend to show such qualifications, the said register and receiver, mistaking the law in relation thereto, recommended to the Commissioner of the General Land Office ordering plaintiff's homestead entry cancelled, which was accordingly done on the records of said land office, and said defendant was permitted to make homestead entry of said tract of land on May 21st, A. D. 1894, that in order to secure said homestead entry and to be permitted to make the same the said defendant made and filed in said land office an affidavit
13 that he did not enter upon and occupy any of said lands so opened to settlement as aforesaid, prior to 12 o'clock noon of September 22nd, A. D. 1891, and subsequent to September 18th, A. D. 1891; that said affidavit was not true but was false because said defendant did prior to 12 o'clock noon of September 22nd, 1891 and after September 18th, 1891 enter upon and occupy said tract of land and other parts of said lands so opened to settlement, for the purpose of selecting lands on which to make homestead entry and settlement, and thereby said defendant was not qualified to make homestead entry or homestead settlement on any of said lands and for that reason never acquired any right or interest therein, or title thereto.

Fifth. Plaintiff further alleges that on the 26th day of September, A. D. 1894, he filed in the United States land office at said Oklahoma City his affidavit of contest against the said defendant and his homestead entry on said tract of land, alleging in substance that said defendant was not qualified to make said homestead entry for the reason that he had entered upon and occupied said land and other parts of said lands so opened to settlement, prior to 12 o'clock, noon, of September 22nd, A. D. 1891 and subsequent to September 18th, A. D. 1891 for the purpose of selecting part of said lands to make his homestead settlement and entry thereon, which said affidavit was duly corroborated as required by law and the regulations of the Interior Department.

Sixth. Plaintiff further alleges that said contest so commenced and instituted was duly heard and tried by the register and receiver of said land office, at Oklahoma City, upon testimony and depositions introduced therein, and that upon said hearing and trial said defendant wilfully, intentionally and fraudulently, intending to deceive and mislead and misinform said register and receiver, procured and introduced the testimony of the following named
14 witnesses: W. L. Hartman, Clarence Hartman, Sam Cole, David L. Timmons, John Eaton and H. W. Darrow, who at the instigation and procurement of the said defendant testified before said register and receiver, in substance and effect that the said defendant did not enter upon or occupy any of said lands so opened to settlement as aforesaid before 12 o'clock noon of September 22nd,

A. D. 1891, and subsequent to September 18th, A. D. 1891, and to the effect that they were with said defendant during said period and all of the same; which said testimony was false and known by said defendant to be false when he procured and introduced the same: that by reason of and by said false testimony of said witnesses and of defendant, the honorable register and receiver of said land office was mislead and deceived, and induced thereby to believe that said defendant did not enter upon and occupy any of said lands so opened to settlement prior to 12 o'clock noon of September 22nd, A. D. 1891 and subsequent to September 18th A. D. 1891, and being so induced to believe and believing the same, the said register and receiver made their decision and findings in said hearing and trial, that said defendant did not so enter upon and occupy said lands and was therefore qualified to make settlement and homestead entry of said tract of land; that if said false testimony had not been procured and introduced as aforesaid the said register and receiver would have made their findings that said defendant was disqualified to make said entry, by reason of having entered upon and occupied said lands as aforesaid.

Seventh. Plaintiff further alleges that he could not at the time and had no means in his power to rebut successfully or disprove said false testimony.

Eighth. Plaintiff further alleges that all of the evidence
15 and testimony presented to and heard by said register and receiver at said hearing and trial was then and there reduced to writing, a copy of which is hereto attached and marked Exhibit "A" and made a part of this petition.

Ninth. Plaintiff further alleges that he duly appealed from the said decision and findings of the register and receiver to the Commissioner of the General Land Office, and that the Commissioner of the General Land Office reviewed the decision of said register and receiver on said evidence so in writing, and by reason of said false testimony the said Commissioner of the General Land Office was deceived and mislead as to the facts in said case in reference — said qualifications of said defendant to make said homestead entry and was induced thereby and did affirm the said decision; that plaintiff appealed in due time from said last named decision of said Commissioner of the General Land Office to the honorable Secretary of the Interior, and that said Secretary of the Interior affirmed the said decision of the Commissioner of the General Land Office on said false and fraudulent testimony.

Tenth. Plaintiff further alleges that said defendant received a receiver's final receipt, from said Oklahoma City land office, to the south half of the said south east quarter of section eighteen in township ten, north of range four east of Indian meridian, the said plaintiff and defendant having abandoned all claims under the said homestead laws to the north half of said quarter section. Plaintiff further alleges that his aforesaid settlement, improvements and residence was made and established on the said south half of said quarter section.

Eleventh. Plaintiff further alleges that a patent has been issued by the United States and the President thereof to said defendant for the said south half of said quarter section of land, and has been
16 delivered to the defendant, who now holds the same; that said patent was issued to defendant under said homestead laws, and was procured to be issued by the defendant by reason of said false testimony as aforesaid, so procured and introduced by defendant on said hearing in the Oklahoma City land office.

Twelfth. Plaintiff further alleges that he has fully complied with the homestead laws of the United States in his settlement, residence, improvement and cultivation of said last named tract of land, and that he has fully earned a title thereto, and the same is of a value of ($16,000.00) dollars.

Wherefore, plaintiff prays judgment that said defendant be decreed to be holding the legal title to said tract of land in trust for said plaintiff, and that plaintiff be decreed to be the equitable owner thereof, and that defendant be required to convey to plaintiff the naked legal title which he holds under said patent, and in the event he fails so to do that the title both legal and equitable to said south half of said quarter section of land be decreed by the court to be in the plaintiff, and for such other and further relief as in equity and good conscience plaintiff shall show himself entitled to, and for costs of suit.

WM. M. ESTES, Plaintiff,
By G. W. ADAMS AND
J. H. WOODS,
His Attorneys.

Endorsed: In the district court in and for Pottawatomie county. Wm. M. Estes *vs.* Richard A. Timmons. Petition. Filed in district court, Pottawatomie county, O. T., July 12, 1901. 4:15 p. m. B. D. Shear, clerk, by C. A. Stauber, deputy. G. W. Adams and J. H. Woods, att'ys for plaintiff.

17 EXHIBIT "A."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., August 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies of the depositions of W. S. Hartman, Clarence Hartman, Sam Call, John F. Hartman, H. W. Darrow, John Eaton, and Davis S. Timmons, and affidavits of John Eaton, J. H. Bishop and Wm. Knight, in the case of William M. Estes *vs.* Richard A. Timmons, involving the south half of the south east quarter of section 18, tp. 10 N. R. 4 E., Oklahoma land district, Oklahoma, are true and literal exemplifications of the originals thereof on file in this office, showing interlineations, erasures and corrections as appear therein.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

18 Interrogatories to be propounded to each of the following named witnesses, to wit, John Hartman, North Enid, O. T.; W. I. Hartman, Pana, O. T.; Clarence Hartman, New Ponca, O. T.; Sam Call, Valley Center, Kansas, when their depositions are taken on behalf of the defendant in that case now pending before the United States land office at Oklahoma City, O. T., wherein W. M. Estes is plaintiff and R. A. Timmons is defendant.

Interrogatory No. 1. State your name, age, residence and occupation.

W. L. Hartman, age 62, Pana, Garfield county, O. T., farmer.

Interrogatory No. 2. Are you acquainted with Richard A. Timmons, the defendant in the case of W. L. Estes *vs.* R. A. Timmons, involving the C. ½ of the S. E. ¼ of sec. 18, t'p 10 N. of R. 4 E.?

Yes.

Interrogatory No. 3. Where were you from 8 o'clock on the forenoon of September 22nd, 1891, up to the hour of 12 o'clock noon on said date; that being the hour and day when the Sac & Fox lands in Oklahoma were open to settlement and entry?

On the west line of the Sac & Fox lands.

Interrogatory No. 4. State who were with you at the point named in your last answer.

Richard A. Timmons, Dave Timmons, John F. Hartman, Clarence A. Hartman, Ed Spencer, John Bolding, Mr. Adair and Gus Darrow, and Sam Call and others.

Interrogatory No. 5. You may state if you know, when the defendant, Richard A. Timmons left said point on the line and where he went from that point.

19 He left at 12 o'clock noon, and went onto the claim, the south half of S. E. ¼, 18–10–4.

Interrogatory No. 6. State when Richard A. Timmons left the said Kickapoo and Sac and Fox line, with respect to the time when the crowd assembled up and down that line and made the race into the Sac and Fox lands.

The crowd began to assemble on the line about 8 o'clock a. m. and he left at 12 o'clock noon, September 22nd, 1891.

Interrogatory No. 7. Did you have a watch or timepiece on said day, and if so, state whether said watch or timepiece had the correct time.

I had none.

Interrogatory No. 8. State what time it was by said timepiece when the crowd assembled at the point where you were, on September 22nd, 1891, made the race into the said Sac and Fox lands.

I had no time piece.

Interrogatory No. 9. Do you know the precise whereabouts of the defendant, Richard A. Timmons, from 8 o'clock a. m. on September 22, 1891, to the hour of 12 o'clock noon central standard time, on said day when the race was made into the Sac and Fox lands?

Yes.

Interrogatory No. 10. If you answer the last question in the affirmative, then state where said R. A. Timmons was during said period of time, and tell how you know it.

He was there on the line with me. I could see him all the time.

Interrogatory No. 11. If you have any knowledge of the whereabouts of the said R. A. Timmons, during the 21st day of September, A. D. 1891, that being the day before the opening of said Sac and Fox lands, please state what you know about that, being very full as to your statement.

20 I do not know where he was on September 21st, 1891.

T. M. HELM AND
J. H. EVEREST,
Attorneys for Defendant.

21 TERRITORY OF OKLAHOMA, } ss:
Oklahoma County, }

J. H. Everest, being duly sworn, deposes and says: that he mailed a full and true copy of the above and foregoing interrogatories to W. F. Harne, attorney of record for the plaintiff herein, at Perry, O. T., that being the correct post office address of said attorney, by registered mail, said letter being sent on the 17th day of May, 1898, the registry receipt for said letter is hereto attached.

J. H. EVEREST.

Subscribed and sworn to before me, this 4th day of May, 1898.

——— ———.

Duplicate receipt attached to other copy.

22 Cross interrogatories to be propounded to W. T. Hartman, at the city of Pana, O. T., when his deposition is to be taken on behalf of the defendant in the case of W. M. Estes *vs.* R. A. Timmons, pending in the U. S. land office, involving the S. ½, S. E. ¼, of sec. 18–10–4 E.

1. Where were you on the 16th day of September, 1891?

A. I was at home near Valley Center, in Sedgwick county, Kansas.

2. Give the names of all persons that were with you on the 16th day of September, 1891.

A. I can't remember anybody being there besides the members of my family.

3. Will you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon, of September 22nd, 1891, and after March 3rd, 1891?

A. I can not.

4. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to September 22nd, 1891, and subsequent to the first day of September, 1891?

A. I can not.

5. Is it not a fact that you personally know and were actually with R. A. Timmons near the tract of land in dispute, to wit: the S. ½ of the S. E. ¼, sec. 18, t'p 10 N., R. 4 E., I. M., prior to 12 o'clock, noon, of September 22nd, 1891, and subsequent to September 22nd, 1891, and subsequently to September 1st, 1891.

A. Not before about 8 o'clock a. m. Sept. 22, 1891.

6. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon, September 22, 1891, and subsequent to September 1, 1891?

23 A. I do not.

7. Where were you on the 17th day of September, 1891?

A. I was at home near Valley Center, Kansas.

8. Give the names of all that were with you on the 17th day of September, 1891.

A. No one that I remember, only the members of my family.

9. It is not true that on September 21st, 1891, Timmons was not with you for several hours?

A. I was not with Timmons on September 21st.

10. Where were you on the 18th day of September, 1891?

A. In Sedgwick county, Kansas.

11. Give the names of all the persons that were with you on the 18th day of September, 1891.

A. I cannot remember.

12. Is it not a fact that from the 1st day of September, 1891, to September 22nd, 1891, there were occasions of several days when you did not know where Timmons was?

A. I was not with him during that time and do not know where he was.

13. Are you acquainted with John W. Boling and his brother and brother-in-law, the latter residing at Norman?

A. I met John Boling and Adair the morning of the opening.

14. Is it not true that on September 20th, 1891, there were several hours when Timmons was absent from your camp?

A. I did not see Timmons on the 20th.

15. Where were the two Bolings and their brother-in-law or either of them on September 20th? That is to say on the second day before the opening of the Sac and Fox country to settlement?

A. I do not know.

16. Where were the persons named last above on the 20th

24 day of September, 1891?

A. I do not know.

17. Is it not a fact that you and Timmons and others were with the Bolings and their brother-in-law on September 20th, 21st, and the 22nd days of September, 1891?

A. I was with them on the 22nd, after about 8 o'clock a. m. but not on the 20th, nor 21st. I did not know of but the one Boling, (John), being there on the 22nd.

18. If your answer to the last question above is in the negative, explain in what particular it is not true.

A. There was but one Boling, and I suppose, his brother-in-law, Adair, and I was not with them on September 20th, or 21st.

19. Did you see the Bolings and their bother-in-law or either of them on September 21st, 1891?

A. No.

20. Where did you see them on September 21st, 1891? Please give the time.

A. I did not see them.

21. Is it not a fact that you were in the Sac and Fox country with one or more of the three persons named last above, prior to 12 o'clock, noon, September 22, 1891, and after March 3, 1891?

A. No.

22. If you answer the last question above in the affirmative, please state whether on any of those occasions Timmons was along.

23. Is it not a fact that Timmons has had knowledge of your being in the Sac and Fox country before 12 o'clock noon, September 22nd, 1891, and subsequent to March 3, 1891, and that you were in there at his suggestion and in his interest, looking up land, as well as in your own interest?

A. No, I was not there. Never was in the Sac and Fox
25 country until after 12 o'clock noon, September 22.

24. Is it not a fact that Timmons has stated to you, or in your presence, that he located the tract of land in controversy, prior to 12 o'clock, noon, September 22, 1891, and subsequent to March 3, 1891, and subsequent to the proclamation of the President opening the Sac and Fox lands to settlement?

A. No.

25. How well acquainted with Timmons were you on September 22, 1891?

A. I had been ordinarily well acquainted with him for about a year.

26. Were you in speaking distance of him all of the morning of September 22, 1891, and up to 12 o'clock, noon, of that day?

A. I do not remember his being out of speaking distance from about 8 o'clock.

27. Were you in conversation with Timmons at close intervals all the morning of September 22, 1891, so that you were in Timmons' presence all the time from daylight up to 12 o'clock, noon, Sept. — 1891?

A. Yes, after about 8 o'clock, a. m.

28. If you answer the last question above in any way other than in the affirmative, please explain in detail where you were with reference to Timmons during the time mentioned in the last question?

29. Give the names of all the persons who were with you and

Timmons from daylight up to 12 o'clock, noon, September 22nd, 1891.

A. Darrow, Call, R. A. Timmons, Dave Timmons, J. T. Hartman, Clarence A. Hartman, Ed Spencer, John Boling, Adair and others. Not from daylight, but from about 8 o'clock, a. m.

30. Were the said Bolings and their brother-in-law with you and Timmons at any time during the period named in the last question above?

26 A. Only John Boling and Adair.

31. If you answer cross-interrogative No. 30 in the affirmative please state exactly at what time each of them were in your company and in that of Timmons?

A. They were in our crowd from about 8 a. m. to 12 noon.

32. How far were you from Timmons at the time of the run, *i. e.* at 12 o'clock noon, September 22nd, 1891, and for a few minutes before? In answering this question please give an estimate in feet, yards or rods.

A. Not more than four (4) feet.

33. Were you close enough to Timmons at 12 o'clock noon, 1891, to talk to him and did you talk to him at that time?

A. Yes, to both questions.

34. State the names of other persons named hereinbefore that were present at the time mentioned in cross-interrogatory No. 33?

A. Dave Timmons, J F. Hartman, Clarence Hartman, John Boling, Sam Call and Mr. Adair.

35. What time did you and Timmons and the others get to the line on the 22nd day of September, 1891?

A. About 8 o'clock a. m.

36. Give the names of all the persons that accompanied you to the line for the run that was to take place at noon, September, 1891?

A. J. F. Hartman, Clarence A. Hartman, Sam Call, Ed Spencer and Dave Timmons.

37. Where did you go from to the line on the day of the opening?

A. From the camp at the crossing on the North Canadian, west of the line.

38. If you went there before the 22nd day of September, 1891, state when, and who was with you.

A. I never went to the line before September 22, 1891.

27 39. Give the exact point on the line from which Timmons made the race.

A. Very nearly straight west of the land in question.

40. Are you the same person that made an affidavit for Timmons which was filed in the district court at Tecumseh?

A. Yes, I made an affidavit for Timmons, but I don't know anything about its being filed.

41. Is it not a fact that you knew Timmons very slightly on the morning of the opening of the country and that you cannot begin to say anything definitely about his whereabouts?

A. No. I knew him personally and know of his whereabouts on that morning after about 8 o'clock.

42. Is it not true that you first met Timmons on the morning of the opening and that so far as you know Timmons may have been in the Sac and Fox country on numerous occasions during the prohibited period.

A. I knew him before that time, but do not know where he was during all the prohibited period.

43. Isn't it a fact that you know nothing about Timmons' whereabouts on the 21st day of September, 1891, and before that time, and that he could have been on the land in controversy frequently?

A. I know nothing about his whereabouts on the 21st, but had seen him frequently in Wichita, Kansas, before that time.

44. Is it not true that you did not see Timmons until on the morning of September 22, 1891, and then only casually, so that you will not pretend to be positive about seeing him there on the line all the morning of the day of the opening?

A. No.

28 Plaintiff, W. M. Estes, gives notice that he desires to propound to the foregoing witness other questions orally in further cross-examination and now moves the honorable register and receiver to so set the dates of taking the several depositions of witnesses for the defendant as to enable attorney for the plaintiff to reach the points at which the several depositions are to be taken, in ample time, as provided by law, and that the defendant be required to give the said plaintiff legal notice of the time and place of taking of the said depositions together with the name and official character of the officer before whom such deposition is to be taken.

W. F. HARN,
[SEAL.] Attorney for W. M. Estes.

Subscribed and sworn to before me this 3rd day of June, 1898.

J. C. McCLELLAND,
Clerk Dist. Court,
By J. C. CORBERAND, Deputy.

Endorsed: Filed May 28, 1898. S. S. Price, reg. L.

29 TERRITORY OF OKLAHOMA, } ss:
County of Garfield, }

Certificate.

I, J. C. McClelland, clerk dist. court, within and for the county of Garfield, Oklahoma, aforesaid, do hereby certify that I caused the witness, W. L. Hartman, whose name is subscribed to the foregoing deposition to appear before me at my office in Enid, Oklahoma Territory, within said county and Territory aforesaid, on the 3rd day of June, 1898; that said witness was first sworn to tell the truth, the

whole truth and nothing but the truth in answer to the interrogatories and cross-interrogatories to be propounded to him in said case of W. M. Estes *vs.* R. A. Timmons.

That I then caused all the interrogatories to be written out and propounded to said witnesses in my presence, and the answers thereto to be written immediately underneath the respective questions; that the whole when completed was read over to said witnesses and that said witnesses then subscribed to said deposition in my presence and was duly sworn to the same, that I am not a relative or attorney of either of the parties to said suit, or in any way interested therein.

Witness my hand and seal of my office, this 3rd day of June, 1898.

[SEAL.] J. C. McCLELLAND,
Clerk of Dist. Court,
By J. C. CORBERAND, Deputy.

Endorsed: W. M. Estes *vs.* R. A. Timmons. Deposition of W. J. Hartman. Rec's opened and published this 6th day of June, 1898. Seymour S. Price, reg. L.

30 Before the United States Land Office at Oklahoma City, O. T.

W. M. ESTES, Plaintiff,
vs.
R. A. TIMMONS, Defendant. } Deposition of Clarence Hartmann.

Personally appeared before me, Charles Ogden, a notary public in and for the county of Kay, Territory of Oklahoma, CLARENCE HARTMAN, who after being first duly sworn on his oath states:—

1. State your name, age, residence and occupation?

A. Clarence A. Hartman, age 29, Ponca City, O. T., farmer.

2. Are you acquainted with Richard A. Timmons, the defendant in the *the* case of W. L. Estes *vs.* R. A. Timmons, involving the south ½ of the S. E. ¼ of sec. 18, t'p 10 N. of R. 4. E.?

A. Yes sir.

3. Where were you from 8 o'clock on the fore noon of September 22, 1891, up to the hour of 12 o'clock noon on said date? That being the hour and day when the Sac and Fox lands in Oklahoma were opened for settlement and entry?

A. I was on the Sac and Fox line between the Sac and Fox and the Kickapoo.

4. State who were with you at the point named in your last answer.

A. There was Richard A. Timmons, Dave Timmons, Sam Call, Ed Spencer, W. L. Hartman, John Hartman, Gus Darrow, John Boling and Ote Adair and others, I think that is all that I was acquainted with.

5. You may state if you know, when the defendant, Richard A.

Timmons, left said point on the line and where he went from that point?

A. He left it at 12 o'clock noon on September 22nd, 1891, and went into the Sac and Fox country.

6. State when Richard A. Timmons left the said Kickapoo
31 and Sac and Fox line, with respect to the time when the crowd assembled up and down that line and made the race into the Sac and Fox lands.

A. He left it at 12 o'clock noon.

7. Did you have a watch or timepiece on said day, and if so, state whether said watch or timepiece had the correct time?

A. Yes sir. I had a watch, and I set the same at Norman on the evening of the 20th of September, 1891, in order to have the correct time.

8. State what time it was by said timepiece when the crowd assembled at the point where you were on September 22, 1891, made the race into said Sac and Fox lands.

A. I arrived on the incline about 8 o'clock on the forenoon of Sept. 22nd, 1891, and the race was made at 12 o'clock, noon.

9. Do you know the precise whereabouts of the defendant, Richard A. Timmons, from 8 o'clock, a. m. on September, 1891, to the hour of 12 o'clock noon, Central standard time on said day, when the race was made into the Sac and Fox lands?

A. Yes sir. He was on the west line of the Sac and Fox.

10. If you answer the last question in the affirmative, then state where said R. A. Timmons was during said period of time, and tell how you know it.

A. He was on the west line of the Sac and Fox lands and I know it because I was there with him.

11. If you have any knowledge of the whereabouts of the said R. A. Timmons during the 21st day of September, A. D. 1891, that being the day before the opening of the said Sac and Fox lands, please state what you know about that, being very full as to your statements.

A. I do not know where he was on the 21st, I was not with him.

32 Cross-interrogatories.

Cross-interrogatories to be propounded to Clarence Hartman at the city of New Ponca, O. T., when his deposition is to be taken on behalf of the defendant in the case of W. M. Estes *vs.* R A. Timmons, pending in the U. S. land office, involving the S. ½ of the S. E. ¼ of sec. 18, t'p 10 N., R. 4 E., I. M.

1. Where were you on the 16th day of September, 1891?

A. I was in Cowley county, Kansas.

2. Give the names of all persons that were with you on the 16th day of September, 1891?

A. I don't remember who might have been with me on that day.

3. Will you swear positively that R. A. Timmons was not in the

Sac and Fox Indian reservation prior to 12 o'clock noon, of September, 22nd, 1891, and after March 3rd, 1891?

A. No I won't.

4. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to September 22nd, 1891, and subsequent to the 1st day of September, 1891?

A. No I won't, because I wasn't with him. I don't know where he might have been prior to 8 o'clock of the 22nd day of September, 1891.

5. Is it not a fact that you personally knew and were actually with R. A. Timmons, near the tract of land in dispute, to wit: the S. ½ of the S. E. ¼ of sec. 18, t'p 10, N. R. 4, E. I. M., prior to 12 o'clock noon of September 22nd, 1891, and subsequent to September 1st, 1891?

A. I was with him from 8 o'clock a. m. until 12 o'clock noon, on Sept. 22nd, 1891, on the Sac and Fox line west of the claim in dispute.

6. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon, September 22nd, 1891 and subsequent to September 1st, 1891?

33 A. No I can't swear that he wasn't prior to 8 o'clock in the forenoon of the 22nd of September, 1891.

7. Where were you on the 17th day of September, 1891?

A. I was in Cowley county, Kansas.

8. Give the names of all that were with you on the 17th day of September, 1891.

A. I can not say who might have been with me.

9. Is it true that on September 21st, 1891, Timmons was not with you for several hours?

A. He wasn't with me at all.

10. Where were you on the 18th day of September, 1891?

A. I was in Cowley county, Kansas.

11. Give the names of all the persons that were with you on the 18th day of September, 1891?

A. I could not say.

12. Is it not a fact that from the 1st day of September, 1891, to September 22nd, 1891, there were occasions of several days when you did not know where Timmons was?

A. Yes sir.

13. Are you acquainted with John W. Boling and his brother and his brother-in-law, the latter residing at Norman?

A. I am acquainted with John Boling and his brother and a man by the name of Ote Adair, whom I have been told is a brother-in-law to Boling.

14. Is it not true that on September 20th, 1891, there were several hours when Timmons was absent from your camp?

A. I was not with Mr. Timmons from February, 1891, until the 22nd of September, 1891, and I never saw him during this time at all.

15. Where were the two Bolings and their brother-in-law or either of them on September 20th, 1891, that is to say on the second
34 day before the opening of the Sac and Fox country to settlement?

A. I don't know.

16. Where were the persons last named above on the 20th day of September, 1891?

A. I don't know.

17. Is it not a fact that you and Timmons and others were with the Bolings and their brother-in-law on September 20th, 21st, and 22nd, 1891?

A. I was not with them at all until the 22nd of September, 1891, and then I was with only one of the Bolings, namely John Boling, and Ote Adair, whom I have been told is John Boling's brother-in-law.

18. If your answer to the last question above is in the negative, explain in what particular it is not true?

A. Read my answer to No. 17, above.

19. Did you see the Bolings and their brother-in-law or either of them on September 21st, 1891?

A. I did not.

20. Where did you see them on September 21st, 1891, please give the time?

A. I never saw them at all on that date.

21. Is it not a fact that you were in the Sac and Fox country with one or more of the three persons named last above prior to 12 o'clock noon, September 22, 1891, and after March 3rd, 1891?

A. No sir, it is not a fact.

22. If you answer the last question above in the affirmative, please state whether on any of these occasions, Timmons was along.

A. Read my answer to No. 21.

23. Is it not a fact that Timmons has had knowledge of your being in the Sac and Fox country before 12 o'clock noon, September 22nd, 1891, and subsequent to March 3rd, 1891, and that
35 you were in there at his suggestion and in his interest, looking up land, as well as in your own interest?

A. No sir, it is not a fact. I was not in there.

24. Is it not a fact that Timmons has stated to you or in your presence, that he located the tract of land in controversy, prior to 12 o'clock noon, September 22nd, 1891, and subsequent to March 3rd 1891, and subsequent to the proclamation of the President opening the Sac and Fox land to settlement?

A. It is not a fact.

25. How well acquainted with Timmons were you on September 22nd, 1891?

A. I was tolerably well acquainted with him.

26. Were you within speaking distance of him all the morning of September 22nd, 1891, and up to 12 o'clock noon, of that day?

A. I was after 8 o'clock of that morning.

27. Were you in conversation with Timmons at close intervals all the morning of September 22nd, 1891, so that you were in Timmons' presence all the time from daylight up to 12 o'clock noon, September 22nd, 1891?

A. From 8 o'clock I was.

28. If you answer the last question above in any way other than in the affirmative, please explain the details where you were with reference to Timmons during the time mentioned in the last question.

A. I was with him after 8 o'clock of the 22nd of September, 1891.

29. Give the names of all persons that were with you and Timmons from daylight up to 12 o'clock noon, September 22, 1891.

A. I was not with Timmons until about 8 o'clock of that day and after that until 12 o'clock noon of that day there were Richard A. Timmons, Dave Timmons, Sam Call, Ed Spencer, W. L. Hartman, John Hartman, Gus Darrow, John Boling and Ote Adair
36 and myself on the line there together.

30. Were the said Boling- and their brother-in-law with you and Timmons at any time during the period named in the last question above?

A. John Boling and Ote Adair were there.

31. If you answer cross-interrogatory No. 30 in the affirmative, please state exactly at what time each of them were in your company and in that of Timmons.

A. John Boling and Ote Adair were in the camp with Timmons when I got there and then we all remained there until 12 o'clock noon, when we made the race.

32. How far were you from Timmons at the time of the run, at 12 o'clock noon, September 22nd, 1891, and for a few minutes before? In answering this question please give an estimate in feet, yards or rods.

A. Possibly we were eight or ten feet apart.

33. Were you close enough to Timmons at 12 o'clock, noon, 1891, to talk to him and did you talk with him at that time?

A. I was close enough to him but don't remember whether I talked to him right at that time or not.

34. State the names of other persons named hereinbefore that were present at the time mentioned in cross-interrogatory No. 33.

A. Read my answer to cross-interrogatory No. 29, above.

35. What time did you and Timmons and the others get to the line on the 22nd day of September, 1891?

A. I don't know what time Timmons got there, but John Hartman, W. L. Hartman, Sam Call, Ed Spencer, and myself went with Dave Timmons to their camp and found R. A. Timmons, Gus Darrow, John Boling and Ote Adair in camp. The crowd I was
37 with reached the line about 8 o'clock a. m. of the 22d day of September, 1891.

36. Give the names of all the persons that accompanied you to the line for the run that was to take place at noon, September, 1891.

A. I stated that in the above answer.

37. Where did you go from to the line on the day of the opening?

A. I went from the ford on the North Canadian north of the Shawnee agency.

38. If you went there before the 22nd day of September, 1891, state when and who was with you.

A. I did not reach the line until about 8 o'clock of the 22nd.

39. Give the exact point on the line from which Timmons made the race.

A. As near as I can tell, it was due west of the claim in dispute.

40. Are you the same person that made an affidavit for Timmons which was filed in the district court at Tecumseh?

A. I made an affidavit and I supposed it was filed there. He said it was.

41. Is it not a fact that you only knew Timmons very slightly on the morning of the opening of the country and that you cannot begin to say anything definitely about his whereabouts?

A. I am and was at that time well acquainted with R. A. Timmons, and I know of his whereabouts from 8 o'clock until 12 o'clock on the day the race was made.

42. Is it not true that you first met Timmons on the morning of the opening, and that so far as you know, Timmons may have been in the Sac and Fox country on numerous occasions during the prohibited period?

A. It is not a fact that I first met Timmons on the morning of the opening, but during the prohibited time, I know nothing
38 definite of his whereabouts until about 8 o'clock on the morning of the 22nd of September, 1891.

43. Isn't it a fact that you know nothing about Timmons' whereabouts on September 21st, 1891, and before that time and that he could have been on the land in controversy frequently?

A. Yes sir.

44. Is it not true that you did not see Timmons until on the morning of September 22nd, 1891, and then only casually, so that you will not pretend to be positive about seeing him there on the line all the morning of the day of the opening?

A. I was acquainted with him and I am positive of his whereabouts from 8 o'clock on the morning of the opening until 12 o'clock noon, of the same day.

45. Haven't you told a number of times to different persons that Timmons may have been in the Sac and Fox country on the day of the opening without you knowing it, as the tract on which he located was not far from the line?

A. No. No.

CLARENCE HARTMAN.

Subscribed and sworn to before me this 8th day of June, 1898, at my office in Ponca City, O. T.

[SEAL.] C. H. OGDEN,
Notary Public.

My commission expires on the 6th day of June, 1902.

Endorsed: Opened and published the 10th day of June, 1898. Anton H. Classen, rec.

39 Interrogatories to be propounded to each of the following named witnesses, to wit, John Hartman, North Enid, O. T.; W. I. Hartman, Pana, O. T.; Clarence Hartman, New Ponca, O. T.; Sam Call, Valley Center, Kansas, when their depositions are taken on behalf of the defendant in the case now pending before the United States land office at Oklahoma City, O. T., wherein W. L. Estes is plaintiff and R. A. Timmons is defendant.

1. State your name, age, residence, and occupation.

A. Sam Call, 26, Valley Center, Kansas, farmer.

2. Are you acquainted with Richard A. Timmons, the defendant in the case of W. L. Estes *vs.* R. A. Timmons, involving the S. ½ of the S. E. ¼ of sec. 18, t'p 10 N. of R. 4 E.?

A. Yes.

3. Where were you from 8 o'clock on the forenoon of September 22nd, 1891, up to the hour of 12 o'clock noon, on said date; that being the hour and day when the Sac and Fox country in Oklahoma was opened to settlement and entry?

A. I was encamped close to the line at the ford between the Kickapoo and Pot. country.

4. State who were with you at the point named in your last answer?

A. R. A. Timmons, John Hartman, Clarence Hartman, W. Hartman. I do not remember who else.

5. You may state if you know, when the defendant Richard A. Timmons left said point on the line and where he went from that point.

40 A. At noon, when the race was made and went to the claim on which he located.

6. State when Richard A. Timmons left the said Kickapoo and Sac and Fox line, with respect to the time when the crowd assembled up and down that line to make the race into the Sac and Fox lands.

A. I do not remember, only that he made the start at the same time with the rest of the line.

7. Did you have a watch or timepiece on said day, and if so, state whether said watch or timepiece had the correct time?

A. No.

8. State what time it was by said timepiece when the crowd as-

sembled at the point where you were on September 22nd, 1891, made the race into said Sac and Fox lands.

No answer.

9. Do you know the precise whereabouts of the defendant, Richard A. Timmons, from 8 o'clock a. m. on September 22, 1891, to the hour of 12 o'clock noon, Central standard time on said day when the race was made into the Sac and Fox lands?

A. He was with us at the camp and we all went to the line together.

10. If you answer the last question in the affirmative, then state where said R. A. Timmons was during said period of time, and tell how you know it.

A. I know because I was with him at the camp and on the line.

11. If you have any knowledge of the whereabouts of the said R. A. Timmons during the 21st day of September, A. D. 1891, that being the day before the opening of said Sac and Fox lands, please state what you know about that, being very full as to your statement?

A. He was with me on the road from Norman to the place where we camped on the line. We left Norman the evening of the
41 20th of September, 1891 and arrived at our camping place in the evening of September 21st, 1891.

T. M. HELM AND
J. H. EVEREST,
Attorneys for Defendant.

TERRITORY OF OKLAHOMA, } ss:
Oklahoma County, }

J. H. Everest, being duly sworn, deposes and says, that he mailed a full and true copy of the above and foregoing interrogatories to W. F. Harne, attorney of record for the plaintiff herein, at Perry, O. T., that being the correct post office address of said attorney, by registered mail, said letter being sent on the 17th day of May, 1898. The registry receipt for said letter is hereto attached.

[SEAL.]

J. H. EVEREST.
SAM CALL.

Subscribed and sworn to before me, at Valley Center, Kansas, this 8th day of June, 1898.

WILLIS DAVIS,
Notary Public.

Commission expires Nov. 19th, 1891.

42 Copy of Registry Receipt.

Registered Letter No. 396.

[Parcel.]*

POST OFFICE, OKLAHOMA, O. T.

Received May 17th, 1898, from J. H. Everest, Oklahoma O. T. a { let. / par.* } addressed W. F. Harn, clerk district court, Perry, O. T.

G. A. BEIDLER, P. M.,
Per —— ——.

5–2886.

Duplicate.

This space is reserved on counterpart for particulars connected with despatch of registered piece. 357.

43 STATE OF KANSAS, } ss:
County of Sedgwick, }

Certificate.

I, Willis Davis, a notary public, within and for the county and State aforesaid, do hereby certify that I caused the witness, Sam Call, whose name is subscribed to the foregoing deposition to appear before me at my office in Valley Center, Kansas, within said county and Territory aforesaid, on the 8th day of June, 1898; that said witness was first duly sworn to tell the truth, the whole truth and nothing but the truth in answer to the interrogatories and cross-interrogatories to be propounded to him in said case of W. L. Estes *vs.* R. A. Timmons; that I then caused all the interrogatories to be written out and propounded to said witness in my presence, and the answers thereto to be written immediately underneath the respective questions, that the whole when completed was read over to said witness and that said witness then subscribed to said deposition in my presence and was duly sworn to the same; that I am not a relative or attorney of either of the parties to said suit or in any way interested therein.

Witness my hand and seal of my office, this 8th day of June, 1898.

[SEAL.] WILLIS DAVIS,
Notary Public.

Commission expires Nov. 19, 1898.

* [Words enclosed in brackets erased in copy.]

44 United States Land Office, Oklahoma, Oklahoma.

W. M. ESTES
vs.
R. A. TIMMONS.

Testimony of John F. Hartman, of the county of Garfield and Territory of Oklahoma, taken before H. M. Spalding, a notary public, at North Enid, O. T., on the 3rd day of June, 1898, by virtue of the stipulation hereunto attached.

1. State your name, age, residence, and occupation.

A. John F. Hartman, 31 years of age, reside at Jennie, O. T., farmer.

2. Are you acquainted with Richard A. Timmons, the defendant in the case of W. L. Estes *vs.* R. A. Timmons, involving the S. ½ of the S. E. ¼ of sec. 18, t'p 10 N. of R. 4 E.?

A. Yes sir.

3. Where were you from 8 o'clock on the forenoon of September 22, 1891, up to the hour of 12 o'clock noon on said date; that being the hour and day when the Sac and Fox lands in Oklahoma were open to settlement and entry?

A. I was on the line between the Kickapoo and Sac and Fox country.

4. State who were with you at the point named in your last answer.

A. R. A. Timmons, Dave Timmons, C. A. Hartman and W. L. Hartman, Sam Call, Ed Spencer, John W. Boling, Ote Adair and H. W. Darrow and others, who I do not know.

5. You may state if you know, when the defendant, Richard A. Timmons, left said point on the line and where he went from that point.

A. Left at 12 o'clock and went on the claim in dispute.

6. State when Richard A. Timmons left the said Kickapoo
45 and Sac and Fox lines, with respect to the time when the crowd assembled up and down the line, made the race into the Sac and Fox lands.

A. He left at 12 o'clock.

7. Did you have a watch or timepiece on said day, and if so, state whether said watch or timepiece had the correct time?

A. I had a watch, and I believe that the watch had the correct time, as I set the watch in Norman on the evening of the 20th, of September, 1891, and he, Richard A. Timmons, started the same time that others did along the line.

8. State what time it was by said timepiece when the crowd assembled at the point where you were, on September 22, 1891, — made the race into the Sac and Fox lands?

A. I go- there about 8 o'clock in the morning and there was quite a crowd there at that time.

9. Do you know the precise whereabouts of the defendant, Richard A. Timmons, from 8 o'clock, a. m. of September 22, 1891, to the hour of 12 o'clock noon, Central standard time, on said day upon — the race was made into the Sac and Fox lands?

A. Yes, sir.

10. If you answer the last question in the affirmative, then state where said R. A. Timmons was during said period of time, and tell how you know it.

A. He was on the line of the Sac and Fox lands, and I was with him, that is the way I know it.

11. If you have any knowledge of the whereabouts of the said R. A. Timmons, during the 21st day of September, A. D. 1891, that being the day before the opening of said Sac and Fox lands, please state what you know about that, being very full as to your statement.

A. I was not with him on that day and do not know where he was.

46 Cross-interrogatories.

1. Where were you on the 16th day of September, 1891?

A. I was in Sedgwick county, Kansas.

2. Give the names of all persons that were with you on the 16th day of September, 1891.

A. I do not know who was with me.

3. Will you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon of September 22, 1891, and after March 3, 1891?

A. I was not with him all of that time, so I do not know.

4. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to September 22, 1891, and subsequent to the first day of September, 1891?

A. I do not know, I was not with him all the time.

5. Is it not a fact that you personall- know, and were actually with R. A. Timmons near the tract of land in dispute, to wit: the S. ½ of the S. E. ¼ sec. 18, t'p 10, N. R. 4 E. I. M. prior to 12 o'clock noon of September 22, 1891, and subsequent to September 1, 1891?

A. Was not any nearer than the line between the Sac and Fox and Kickapoo countries.

6. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon September 22, 1891, and subsequent to September 1st, 1891?

A. I was not with him all the time and do not know.

7. Where were you on the 17th of September, 1891?

A. I was in Sedgwick county, Kansas.

8. Give the names of all that were with you on the 17th day of September, 1891.

A. I do not remember.

47 9. Is it not true that on September 21st, 1891, Timmons was not with you for several hours?

A. He was not with me at all.

10. Where were you on the 18th day of September, 1891?

A. I was in Sedgwick county, Kansas.

11. Give the names of all the persons who were with you on the 18th day of September, 1891?

A. I do not remember.

12. Is it not a fact that from the 1st day of September, 1891, to September 22, 1891, there were occasions of several days when you did not know where Timmons was?

A. Yes sir. I was not with him all the time.

13. Are you acquainted with John W. Boling and his brother and brother-in-law, the latter a resident of Norman?

A. I am acquainted with John W. Boling, his brother and slightly acquainted with his brother-in-law.

14. *It is* not true that on September 20th, 1891, there were several hours when Timmons was absent from your camp?

A. I was not with Timmons September 20, 1891.

15. Where were the two Bolings and their brother-in-law or either of them on September 20, 1891, that is to say on the second day before the opening of the Sac and Fox country to settlement?

A. I do not know.

16. Where were the persons named above on the 20th day of September, 1891?

A. I do not know.

17. Is it not a fact that you and Timmons and others were with the Bolings and their brother-in-law on September 20th, 21st, and 22nd *of September*, 1891?

A. I was not with them until about 8 o'clock a. m. on Sep-
48 tember 22, 1891, and then there was only one Boling and that was John W. Boling.

18. If your answer to the last question above is in the negative, explain in what particular it is not true.

A. I was not with any of them on the 20th and 21st, and with only one of the Bolings and Timmons on the 22nd of September, 1891.

19. Did you see the Bolings and their brother-in-law or either of them on September 21st, 1891?

A. No, sir.

20. Where did you see them on September 21st, 1891? Please give the time.

A. Did not see them.

21. Is it not a fact that you were in the Sac and Fox country with one or more of the three persons named last above prior to 12 o'clock noon, September 22, 1891, and after March 3, 1891?

A. I was not.

22. If you answer the last question above in the affirmative, please state whether on any of those occasions Timmons was along.

No answer to make to this.

23. Is it not a fact that Timmons has had knowledge of your be-

ing in the Sac and Fox country before 12 o'clock noon, September 22, 1891, and subsequent to March 3, 1891, and that you were in there at his suggestion and in his interest, looking up land, as well as to your own interest?

A. I was not in there at any time.

24. Is it not a fact that Timmons has stated to you, or in your presence, that he located the tract of land in controversy, prior to September 22, 1891, at 12 o'clock noon, and subsequent to March 3, 1891, and subsequent to the proclamation of the President
49 opening the Sac and Fox lands to settlement.

A. No sir.

25. How well acquainted with Timmons were you on September 22, 1891?

A. I was pretty well acquainted with him.

26. Were you within speaking distance of him all of the morning of September 22, 1891, and up to 12 o'clock noon, of that day?

A. I was from 8 o'clock to 12 o'clock.

27. Were you in close conversation with Timmons at close intervals all the morning of September 22, 1891, so that you were in Timmons' presence all the time from daylight up to 12 o'clock September 22, 1891?

A. Not until after 8 o'clock in the morning.

28. If you answer the last question above in any way other than in the affirmative, please explain in detail where you were with reference to Timmons during the time mentioned in the last question.

A. I was only with him from 8 o'clock on the Sac and Fox line.

29. Give the names of all the persons that were with you and Timmons from daylight up to 12 o'clock noon, September 22, 1891.

A. Richard A. Timmons, Dave Timmons, W. L. Hartman, C. A. Hartman, Sam Call, W. H. Darrow, Ed Spencer, John W. Boling, Ote Adair, and others, names unknown, from and after 8 o'clock a. m. September 22, 1891.

30. Were the said Bolings and their brother-in-law with you and Timmons at any time during the period named in the last question above?

A. After 8 o'clock, a. m. John W. Boling and Ote Adair who I suppose to be his brother-in-law.

31. If you answer cross-interrogatory No. 30 in the affirmative, please state exactly at what time each of them were in your company and *as* that of Timmons?

A. John W. Boling and Otie Adair were in the crowd with
50 us after 8 o'clock until noon of September 22, 1891.

32. How far were you from Timmons at the time of the run, *i. e.* at 12 o'clock noon, September 22, 1891, and for a few minutes before? In answering this question please give an estimate in feet, yards or rods.

A. About ten feet.

33. Were you close enough to Timmons at 12 o'clock noon, 1891, to talk to him and did you talk to him at that time?

A. Yes.

34. State the names of other persons named hereinbefore that were present at the time mentioned in cross-interrogatory No. 33.

A. Most all of them.

35. What time did you and Timmons and the others get to the line on the 22nd day of September, 1891?

A. I got there at 8 o'clock and then found Timmons.

36. Give the names of all persons that accompanied you to the line for the run that was to take place at noon, September, 1891?

A. W. L. Hartman, C. A. Hartman, Sam Call, Ed Spencer and Dave Timmons.

37. Where did you go from to the line on the day of the opening?

A. From the Kickapoo ford.

38. If you went there before the 22nd day of September, 1891, state when and who was with you.

A. I did not go there before.

39. Give the exact point on the line from which Timmons made the race?

A. Started west of the land in dispute.

40. Are you the same person that made an affidavit for Timmons which was filed in the district court at Tecumseh?

51 A. Yes sir.

41. Is it not a fact that you only knew Timmons very slightly on the morning of the opening of the country and that you cannot begin to say anything definitely about his whereabouts?

A. It is not a fact. I did know him well, and was with him after 8 o'clock a. m., September 22, 1891.

42. Is it not true that you first met Timmons on the morning of the opening, and that so far as you know, Timmons may have been in the Sac and Fox country on numerous occasions during the prohibited period?

A. He might have been there without my knowledge as I was not with him all the time.

43. Isn't it a fact that you knew nothing about Timmons' whereabouts on the 21st day of September, 1891, and before that time and that he could have been on the land in controversy frequently?

A. I was not with him on September 21st, 1891, but I saw him in Wichita Kansas several times during the prohibited period.

44. Is it not true that you did not see Timmons until on the morning of September 22, 1891, and then only casually, so that you will not pretend to be positive about seeing him there on the line all the morning of the day of the opening?

A. I am positive about seeing him after 8 o'clock of the morning of September 22, 1891, on the line.

45. Haven't you told a number of times to different persons that Timmons may have been in the Sac and Fox country on the day of the opening without you knowing it, as the tract on which he located was not far from the line?

A. No.

JOHN F. HARTMAN.

Subscribed and sworn to before me this 3rd day of June, 1898.
[SEAL.] H. M. SPALDING,
Notary Public.

My commission expires Sept. 25, 1901.

52 TERRITORY OF OKLAHOMA, } ss:
County of Garfield, }

Certificate.

I, H. M. Spalding, a notary public within and for the county and Territory aforesaid, do hereby certify that I caused the witness, John F. Hartman, whose name is subscribed to the foregoing deposition to appear before me at my office in North Enid, O. T., within said county and Territory aforesaid, on the 3rd day of June, 1898; that said witness was first duly sworn to tell the truth, the whole truth and nothing but the truth in answer to the interrogatories and cross-interrogatories to be propounded to him in said case of W. M. Estes *vs.* R. A. Timmons; that I then caused all the interrogatories to be written out and propounded to said witnesses in my presence, and the answers thereto to be written immediately underneath the respective questions; that the whole when completed was read over to said witnesses and that said witnesses then subscribed to said deposition in my presence and was duly sworn to the same; that I am not a relative or attorney of either of the parties to said suit; or in any way interested therein.

Witness my hand and seal of my office, this 3rd day of June, 1898.
H. M. SPALDING,
[SEAL.] Notary Public.

Fees $5.85 paid by defendant.
My commission expires September 25th, 1901.

Endorsed: W. M. Estes *vs.* R. A. Timmons. Deposition of John Hartman. Filed by mail and published June 6, 1898. Seymour S. Price, reg. L.

53 The taking of the depositions herein not being completed, on this the 26th day of September, 1898, the same is hereby continued till the 27th day of September, 1898.

On this, the 27th day of September, 1898, the witness appears, and by order of the notary herein commissioned, the taking of depositions is continued to the 28th day of September, 1898.

Now on this, the 28th day of September, 1898, pursuant to adjournment, comes the witness H. W. DARROW, who being first duly sworn to — the truth, the whole truth and nothing but the truth, deposeth and saith: in reply to the respective interrogatories propounded, as follows:

1. State your name, age, residence, and occupation.

A. H. W. Darrow, lawful age, Shawnee, O. T., dealer in real estate.

2. Are you acquainted with Richard A. Timmons, the defendant in this case, and who has the homestead entry on the S. ½, S. E. ¼ sec. 18, t'p 10 N. of R. 4 E.?

A. Yes sir.

3. How long have you known the said Richard A. Timmons?

A. Ten years.

4. State if you know, where the said Richard A. Timmons was, from the 18th day of September, 1891, to the 22nd day 1891, at 12 o'clock noon of said last named date, Central standard time?

A. We came from Norman—yes sir.

5. If you answer the last question by saying that you knew of his whereabouts within said period, state minutely and in detail where the said Richard A. Timmons was each day and tell who was with him at said various times, as nearly as you can recollect.

A. We left Norman the afternoon of the 18th, camped at Little river, near the falls, the night of the 18th, and the morning of the 19th we started north, as near as I can remember camped
54 near Choctaw City the night of the nineteenth, from there we went northwest, crossed the North fork of the North Canadian river, which I supposes to be the North Canadian, then in a southeasterly direction in the Kickapoo, and we camped that night at what is called Kickapoo springs. On the 21st we moved down from Kickapoo springs to within ¾ of a mile of the Sac and Fox Reservation line. I could spit in his ear any of that time if I had wanted to. We moved our camp the morning of the 22nd, up on to the line, we remained there until 12 o'clock noon, Central standard time, and we made the run at 12 o'clock sharp. I remember that there was Sam Ferguson, John Eaton, Richard A. Timmons and myself, from Little River falls to our camp near the Sac and Fox line, then were joined by John Hartman at eight o'clock in the morning of the 22nd, Clarence Hartman, Sam Call, and Ed Spencer, John W. Boling, Ote Adair, and D. S. Timmons, these were all present that I knew.

6. State specifically if you know, where said Richard A. Timmons was at 12 o'clock, noon, September 22nd, 1891, that being the hour and day when the Sac and Fox lands were opened to settlement and entry.

A. On the Kickapoo line.

7. State who was with said R. A. Timmons at the point you have last named when the race was made into said lands.

A. Those Hartmans were with him and myself Sam Call, Boling, Adair, Ed Spencer and D. S. Timmons. There were thousands of people there that I didn't know.

8. What did said R. A. Timmons do when the crowd made the race from said point into the Sac and Fox lands?

A. All I could see was a blue streak and his coat tail.

9. Do you know one John W. Boling? State if you know, where John W. Boling was from the 18th of September 1891, to 12 o'clock noon of September 22, 1891, where he was at the last named hour and day.

55 A. Yes, but I am ashamed of it. I don't know where John W. Boling was from the morning of the 19th of September until the morning of the 22nd, 1891. I don't want anybody to know that I ever knew him because I am ashamed of it.

Cross-interrogatories.

1. Where were you on the 16th day of September, 1891?

A. As near as I can remember, I was two miles west of Norman on the 16th.

2. Give the names of all persons that were with you on the 16th day of September, 1891?

A. Dave Timmons was with me, two miles west of Norman, about, it might have been two and a half. We were camped there.

3. Will you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon, of September 22, 1891, and after March 3, 1891?

A. I swear positively that he couldn't get in there without me seeing him. Timmons wasn't in there.

4. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to September 22nd, 1891, and subsequent to the 1st day of September, 1891?

A. He was not in the reservation between those dates.

5. Is it not a fact that you personally know and was actually with R. A. Timmons, near the tract of land in dispute, to wit: the S. ½ of the S. E. ¼, sec. 18, t'p 10, N. R. 4 E. I. M., prior to 12 o'clock noon of September 22, 1891, and subsequent to Sept. 1, 1891?

A. I just swore that I was not.

6. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon, September 22, 1891, and subsequent to September 1, 1891?

A. No, he was not in there.

56 7. Where were you on the 17th day of September, 1891?

A. I was two or two miles and a half west of Norman.

8. Give the names of all that were with you on the 17th day of Sept., 1891.

A. Dave Timmons.

9. Is it not true that on September 21st, 1891, Timmons was not with you for several hours?

A. Timmons was with me every minute of the time.

10. Where were you on the 18th day of September, 1891?

A. We left camp two miles west of Norman and went to Little River falls.

11. Give the names of all persons that were with you on the 18th day of September, 1891.

A. Dave Timmons was with me up to three o'clock, when R. A. Timmons arrived in camp, then we hitched up our teams and started for the Sac and Fox country.

12. Is it not a fact that from the 1st day of September, 1891, to Sept. 22nd, 1891, there were occasions of several days when you did not know where Timmons was?

A. I had several letters from Mr. Timmons from Wichita before the 18th of September. I had letters from him every week from Wichita. I know he could not be in Wichita and in the Sac and Fox country too.

13. *Are you acquainted with John W. Boling* and his brother and brother-in-law, the latter residing at Norman.

A. Yes, I know that crowd.

14. Is it not true that on September 20th, 1891, there were several hours when Timmons was absent from your camp?

A. He couldn't have been unless I saw him. He was right there.

57 15. Where were the two Bolings and their brother-in-law or either of them on Sept. 1891, that is to say, on the second day before the opening of the Sac and Fox country to settlement?

A. I don't know.

16. Where were the persons named last above on the 20th day of Sept. 1891?

A. I don't know.

17. Is it not a fact that you and Timmons and others were with the Bolings and their brother-in-law on September 20th, 1891, 21st and 22nd days of September, 1891?

A. I don't know where they were on the 20th and 21st. They came in camp on the 22nd.

18. If your answer to the last question above is in the negative, explain in what particular it is not true.

A. The answer is the same as above.

19. Did you see the Bolings or their brother-in-law or either of them on Sept. 21st, 1891?

A. I did not.

20. Where did you see them on September 21st, 1891? Please give the time.

A. I did not see them.

21. Is it not a fact that you were in the Sac and Fox country with one or more of the three persons named last above, prior to 12 o'clock noon September 22nd, 1891, and after March 3, 1891?

A. No. I was not there.

22. If you answer the last question above in the affirmative, please state whether on any of those occasions, Timmons was along?

A. He was right with me.

23. Is it not a fact that Timmons has had knowledge of your being in the Sac and Fox country before 12 o'clock noon, September 22nd, 1891, and subsequent to March 3, 1891, and that

58 you were in there at his suggestion and in his interest, looking up land, as well as in your own interest?

A. No.

24. Is it not a fact that Timmons has stated to you, or in your presence, that he located the tract of land in controversy prior to 12 o'clock noon, September 22, 1891, and subsequent to March 3, and subsequent to the proclamation of the President opening the Sac and Fox lands to settlement?

A. No.

25. How well acquainted with Timmons were you on September 22, 1891?

A. I know Col. Timmons as well as I do my brother. I know him better than I do any other man.

26. Were you in speaking distance of him all of the morning of September 22, 1891, and up to 12 o'clock noon, of that day?

A. I could have killed him if I wanted to all the time. I was right at him so I could lay my hand on him.

27. Were you in conversation with Timmons at close intervals all the morning of September 22, 1891, so that you were in Timmons' presence all the time from daylight up to 12 o'clock noon, Sept. 22, 1891?

A. I was.

28. If you answer the last question in any other way than the affirmative, please explain in detail where you were, with reference to Timmons during the time mentioned in the last question.

A. I was with him.

29. Give the names of all persons that were with you and Timmons on daylight up to 12 o'clock, noon, Sept. 22, 1891?

A. Dave Timmons, R. A. Timmons, myself, H. W. Darrow, from daylight till 8 o'clock in the morning. From that on till
59 noon, we were joined by the three Hartmans, Ed Spencer, Sam Call, John W. Boling, Ote Adair and others.

30. Were the said Bolings and their brother-in-law with you and Timmons at any time during the period named in the last question above?

A. Yes sir, from eight o'clock till noon.

31. If you answer cross-interrogatory No. 30 in the affirmative, please state exactly at what time each of them were in your company and in that of Timmons.

A. From eight o'clock till noon.

32. How far were you from Timmons at the time of the run, *i. e.*, at 12 o'clock noon, Sept. 22nd, 1891, and for a few minutes before? In answering this question please give an estimate in feet, yards or rods.

A. I was probably a foot from him or two feet.

33. Were you close enough to Timmons at 12 o'clock, noon, 1891, to talk to him and did you talk to him at that time?

A. Yes sir, I was right there.

34. State the names of other persons named hereinbefore that were present at the time mentioned in cross-interrogatory No. 33.

A. The Hartmans, Sam Call, Dave Timmons, John W. Boling, Ote Adair.

35. What time did you and Timmons and the others get to the line on the 22nd day of September, 1891?

A. We moved up to the line that day.

36. Give the names of all persons that accompanied you to the line for the run that was to take place at noon, September, 1891.

A. We were on the line when the Hartmans came to us. Col. Timmons and Dave, his son, were with him when we started for the line.

37. Where did you go from to the line on the day of the opening?

A. From about ¾ of a mile of the line in the Kickapoo country.

60 38. If you went there before the 22nd day of September, 1891, state when and who was with you.

A. We were within about ¾ of a mile of the line, Col. Timmons, Dave Timmons and myself.

39. Give the exact point on the line from which Timmons made the race.

A. We were on the line. We were within two or three hundred yards south of the section corner, between 18 and 19.

40. Are you the same person that made an affidavit for Timmons which was filed in the district court at Tecumseh?

A. I was. I am.

41. Is it not a fact that you only knew Timmons very slightly on the morning of the opening of the country and that you cannot begin to say anything definitely about his whereabouts?

A. I knew Timmons for ten years. His whereabouts were as I stated before.

42. Is it not true that you first met Timmons on the morning of the opening and that as far as you know Timmons may have been in the Sac and Fox country on numerous occasions during the prohibited period?

A. It is not true.

43. Isn't it a fact that you know nothing about Timmons' whereabouts on the 21st day of September, 1891, and before that time, and that he could have been on the land in controversy frequently?

A. It is not true.

43½. Isn't it a fact that you know nothing about Timmons' whereabouts on the 21st day of September, 1891, and before that time and that he could have been on the land in controversy frequently?

A. No sir. It is not a fact.

44. Is it not true that you did not see Timmons until on the morning of September 22nd, 1891, and then only casually, so

61 that you will not pretend to be positive about seeing him there on the line, all the morning of the day of the opening?

A. I know where Timmons was all the time.

45. Haven't you told a number of times to different persons that Timmons may have been in the Sac and Fox country on the day of the opening without you knowing it, as the tract on which he located was not far from the line?

A. No sir. I never told anybody.

H. W. DARROW.

62 TERRITORY OF OKLAHOMA, County of Pottawatomie, } ss:

Certificate.

I, R. E. Wood, a notary public within and for the county and Territory aforesaid, do hereby certify that I caused the witnesses, John Eaton and H. W. Darrow whose name is subscribed to the foregoing deposition to appear before me at my office in Shawnee, Oklahoma Ter., within said county and Territory aforesaid, on the 26th day of Sept. 1898.

That said witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth in answer to the interrogatories and cross-interrogatories to be propounded to him in said case of W. M. Estes *vs.* Richard A. Timmons; that I then caused all of the interrogatories to be written out and propounded to said witnesses in my presence, and the answers thereto to be written immediately underneath the respective questions; that the whole when completed was read over to said witnesses and that said witnesses then subscribed to said deposition in my presence and was duly sworn to the same; that I am not a relative or attorney of either of the parties to said suit or in any way interested therein.

Witness my hand and seal of my office, this 28th day of Sept. 1898.

[SEAL.]

R. E. WOODS,
Notary Public.

63 United States Land Office, Oklahoma City, O. T.

W. M. ESTES, Plaintiff,
vs.
R. A. TIMMONS, Defendant.

In pursuance to the attached commission to take depositions, personally appeared before me, the undersigned notary public, on this 26th day of September, 1898, at my office in Shawnee, O. T., JOHN EATON, who being first duly sworn, that the evidence he should give in the above entitled cause, should be the truth, the whole truth, and nothing but the truth, states in reply to the respective interrogatories, as follows:

1. State your name, age, residence, and occupation.

A. John Eaton, 36, Shawnee, O. T., carpenter.

2. Are you acquainted with Richard A. Timmons, the defendant in this case, and who has the homestead entry on the S. ½ of the S. E. ¼, sec. 18, t'p 10 N. R. 4. E.?

A. Yes sir, I am acquainted with Timmons. I am acquainted with the land, but don't know it by those numbers.

3. How long have you known the said Richard A. Timmons?

A. I have known him since Sept. '91.

4. State if you know, where the said Richard A. Timmons was, from the 18th day of September, 1891, to the 22nd day, 1891, at 12 o'clock noon of said last named date, Central standard time?

A. I met Mr. Timmons on the 19th of September, on Little river, at or near Little River falls; about three miles west of the Pottawatomie county line, in old Oklahoma, near the line. He traveled with me in a wagon from that point via Choctaw City within ¾ of a mile from the Sac and Fox line, through the Kickapoo country, to a point near the present site of Shawnee, arriving there
64 on the 21st of September, about 4 o'clock in the afternoon, at which time and place I left him and saw no more of him till about a year afterwards.

5. If you answer the last question by saying you knew of his whereabouts within said periods, state minutely and in detail, where the said Richard A. Timmons was each day, and tell who was with him, at said various times, as nearly as you can recollect.

A. Sam Ferguson, a man by the name of Darrow, and Richard A. Timmons, and myself came to Choctaw City on the night of the 19th, of September, 1891; the next morning, on the 20th, we went northwest and crossed the river, the North Canadian, then in a southeast direction down through the Kickapoo country, to within about ¾ of a mile from the Sac and Fox line. I mean by this that on the night of the 20th, we camped at Kickapoo springs, and on the 21st, we moved our camp down to within ¾ of a mile of the Sac and Fox line. At four o'clock in the afternoon, I started north and left Mr. Timmons and the other parties there. He was not in the Sac and Fox country up to four o'clock in the evening of the 21st, of September, 1891.

6. State specifically if you know where said Richard A. Timmons was at 12 o'clock noon, Sept. 22nd, 1891, that being the hour and day when the Sac and Fox lands were opened to settlement and entry.

A. I don't know.

7. State who was with said R. A. Timmons at the point you have last named when the race was made into said lands.

A. I don't know.

8. What did said R. A. Timmons do when the crowd made the race from said point into the Sac and Fox lands?

A. I don't know.

9. Do you know one John W. Boling? State if you know where said John W. Boling was from the 18th of September, 1891, to 12 o'clock noon of Srpt. 22nd, 1891, and where he was at the last named hour and day?

A. I don't know.

65 Cross-interrogatories.

1. Where were you on the 16th day of Sept., 1891?

A. I was either at Paul's Valley or on the road, I don't know exactly which. I think I was on the road.

2. Give the names of all persons who were with you on the 17th day of September, 1891.

A. Sam Ferguson was the only person with me.

3. Will you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon of September 22nd, 1891, and after March 3rd, 1891?

A. I can swear positively that he was not in the Sac and Fox reservation between the morning of the 19th and four o'clock in the afternoon of the 21st of September, 1891. Prior to and after this date, I cannot state.

4. Do you swear positively that R. A. Timmons was not in the Sac and Fox reservation prior to September 22nd, 1891, and subsequent to the 1st day of September, 1891?

A. I cannot, except for the period above mentioned.

5. Is it not a fact that you personally know and were actually with R. A. Timmons near the tract of land in dispute, to wit, the S. ½ of the S. E. ¼ sec. 18, t'p 10, N. R. 4 E. I. M., prior to 12 o'clock noon of September 22, 1891, and subsequent to Sept. 1st, 1891?

A. It is a fact that I personally know Mr. Timmons, and I was with him as indicated in my direct examination, in the Kickapoo country something near a mile and a half from the land described on the 21 day of September, 1891. I did not know the numbers of the land and was not acquainted with the tract that he was going to take, and was not with Mr. Timmons inside of the Sac and
66 Fox country at all before the opening.

6. Do you swear positively that R. A. Timmons was not in the Sac and Fox Indian reservation prior to 12 o'clock noon, September 22, 1891, and subsequent to September 1, 1891?

A. No sir, I do not.

7. Where were you on the 17th day of September, 1891?

A. I was in the Chickasaw Nation, either on the road or at Paul's valley.

8. Give the names of all that were with you on the 17th day of September, 1891.

A. Sam Ferguson is all that I recollect of.

9. Is it not true that on Sept. 21, 1891 Timmons was not with you for several hours?

A. He was with me till four o'clock in the afternoon, as I stated before.

10. Where were you on the 18th day of September, 1891?

A. I was between Paul's valley and Little river.

11. Give the names of all the persons that were with you on the 18th day of September, 1891?

A. There was no one with me but Ferguson, till I met Timmons and Darrow at the camp, late in the evening of that day.

12. Is it not a fact that from the 1st day of September, 1891, to September 22, 1891, there were occasions of several days when you did not know where Timmons was?

A. I did not know where he was up till the evening of the 18th. I did not know where he was after four o'clock on the 21st.

13. Are you acquainted with John W. Boling and his brother and brother-in-law, the latter residing at Norman?

A. I don't know either of them.

67 14. Is it not true that on Sept. 20th, there were several hours when Timmons was absent from your camp?

A. He was with me all the time.

15. Where were the two Bolings and their brother-in-law, or either of them on September —, 1891, that is to say, on the second day before the opening of the Sac and Fox country to settlement?

A. I don't know anything about them.

16. Where were the persons last named above on the 20th day of September, 1891?

A. I don't know.

17. Is it not a fact that you and Timmons and others were with the Bolings and their brother-in-law on Sept. 20th, 21st, and the 22nd, *days of September*, 1891?

A. I don't know.

18. If you- answer to the last question above is in the negative, explain in what particular it is not true.

A. All I can say is, I don't know the Bolings.

19. Did you see the Bolings and their brother-in-law or either of them on Sept. 21st, 1891?

A. I did not see them to know them.

20. Where did you see them on Sept. 21st, 1891? Please give the time.

A. I did not see them at all to know them.

21. Is it not a fact that you were in the Sac and Fox country with one or more of the three persons named last above prior to 12 o'clock noon September 22, 1891 and after March 3, 1891?

A. No sir.

68 22. If you answer the last above question in the affirmative, please state whether on any of those occasions Timmons was along.

A. No sir.

23. Is it not a fact that Timmons has had knowledge of your being in the Sac and Fox country before 12 o'clock noon September 22, 1891 and subsequent to March 3, 1891, and that you were in there at his suggestion, and in his interest looking up land, as well as in your own interest?

A. No sir.

24. Is it not a fact that Timmons has stated to you, or in your presence, that he located the tract of land in controversy prior to

12 o'clock noon Sept. 22, 1891, and subsequent to March 3, 1891, and subsequent to the proclamation of the President opening the Sac and Fox lands to settlement?

A. No sir.

25. How well acquainted with Timmons were you on September 22, 1891?

A. I had known him three days.

26. Were you within speaking distance of him all of the morning of Sept. 22, 1891, and up to 12 o'clock noon, of that day?

A. No sir.

27. Were you in conversation with Timmons at close intervals all the morning of Sept. 22, 1891, so that Timmons was in your presence all the time from daylight up to 12 o'clock on September 22, 1891?

A. No sir.

28. If you answer the last question in any way other than in the affirmative, please explain in detail where you were with reference to Timmons during the time mentioned in the last question.

A. I was about thirty miles away. I was up about Chandler, about the site of Chandler.

29. Give the names of all persons that were with you and
69 Timmons *on* daylight up to 12 o'clock noon, Sept. 22, 1891.

A. I was not with Timmons on the 22nd.

30. Were the said Bolings and their brother-in-law with you and Timmons at any time during the period named in the last question above?

A. No sir.

31. If you answer cross-interrogatory No. 30 in the affirmative, please state exactly at what time each of them were in your company and in that of Timmons?

A. I answered no.

32. How far were you from Timmons at the time of the run, *i. e.* at 12 o'clock noon, Sept. 22, 1891, and for a few minutes before? In answering the question, please give an estimate in feet, yards or rods.

A. I must have been about thirty miles.

33. Were you close enough to Timmons at 12 o'clock noon, 1891, to talk to him and did you talk to him at the time?

A. No sir. I was thirty miles away.

34. State the names of other persons named hereinbefore that were present at the time mentioned in cross-interrogatory No. 33.

A. I was thirty miles away.

35. What time did you and Timmons and the others get to the line on the 22nd day of September, 1891?

A. I was not with them. I was up north, thirty miles away.

36. Give the names of all persons that accompanied you to the line for the run that was to take place at noon, September, 1891.

A. There were hundreds of people there. I didn't know any one.

38. Where did you go from to the line on the day of the opening?

A. I didn't make the run. I was in the neighborhood of the site of Chandler.

70 38. If you were there before the 22nd day of September, 1891, state when and who was with you.

A. I cannot answer this further than is covered by my previous answers.

39. Give the exact point on the line from which Timmons made the race.

A. I was not present and cannot give it.

40. Are you the same person that made an affidavit for Timmons which was filed in the district court at Tecumseh?

A. No sir.

41. Is it not a fact that you only knew Timmons very slightly on the morning of the opening of the country and that you cannot begin to say anything definitely about his whereabouts?

A. I had known him but three days and did not see him on the morning or day of the opening.

42. Is it not true that you first met Timmons on the morning of the opening and that so far as you know Timmons may have been in the Sac and Fox country on numerous occasions during the prohibited period?

A. This question was fully answered in my examination above.

43. Isn't it a fact that you knew nothing about Timmons' whereabouts on the 21st day of September, 1891, and before that time, and that he could have been on the land in controversy frequently?

A. I did know Timmons on the 21st day of September and was with him until about four o'clock of that day. I know he was not on the land in controversy up to that hour on that day, nor at any time from the night of the 18th of Sept., 1891, up to that time. Further than this, I can't answer.

44. Is it not true that you did not see Timmons until on the morning of Sept. 22, 1891, and then only casually, so that you will

71 not pretend to be positive about seeing him on the line all the morning of the day of the opening?

A. I did not see him at all that morning, but I had known him three days prior.

45. Haven't you told a number of times to different persons that Timmons may have been in the Sac and Fox country on the day of the opening without you knowing it, as the tract on which he located was not far from the line?

A. No sir.

JOHN EATON.

72 Interrogatories to be propounded to David S. Timmons, whose residence is Shawnee, O. T., but who is temporarily in Valley Center, Kansas, on behalf of the defendant, in the case now pending before the United States land office at Oklahoma City, O. T., wherein Wm. Estes is plaintiff and Richard A. Timmons is defendant, said deposition to be taken before Willis Davis, notary public, Valley Center, Kansas.

1. State your name, age, residence, and occupation.

A. David S. Timmons, age 33, Shawnee, O. T., occupation, paperhanger.

2. What relation, if any, are you to the defendant, Richard A. Timmons?

A. Son.

3. Do you know where the defendant, Richard A. Timmons, was between Feb'y 13, 1891, and noon of September 22nd, 1891? If you say you know, you may state what you know of his whereabouts between said periods of time.

A. Yes. He was in Wichita, Kansas until a few days before the opening. I saw him for the first time in this period at Norman and we went as far as Little river together, on or about the 20th day of September, 1891.

4. Do you know where said Richard A. Timmons was, particularly from the 18th day of September, 1891, to noon of September 22, 1891? If you say you do, please state with particularity each of the places where said defendant was during that period of time.

A. I saw him as stated above. I saw him again the evening of the 21st, and we camped together on the line of the Sac and Fox and Kickapoo country. From the evening of the 21st, I was with him till noon of the 22nd.

73 5. Do you know one —— Adair?

A. I know several Adairs, Ot Adair and his father.

6. Are you acquainted with one J. W. Boling?

A. I am.

7. You may state whether you were in the Sac and Fox country at any time prior to noon of September 22, 1891, in company with your father, Richard A. Timmons and said Adair and J. W. Boling.

A. If I was over the line in the Sac and Fox country, I did not know it.

8. If you say that your father and those with him were camped near the Sac and Fox country and a few days prior to September 22, 1891, please state *whether* said camp was, with reference to the Sac and Fox and Kickapoo line, when your father came to that camp and when he left and whether he was at any time, to your knowledge within said Sac and Fox country, before the hour of 12 o'clock noon on said September 22, 1891.

A. I was camped with my father from the evening of June 21st, till noon of the 22, 1891, in the Kickapoo country, west of the Sac

and Fox line. He was not in the Sac and Fox country prior to the opening.

9. Do you know where the said Richard A. Timmons was at the hour of 12 o'clock noon, on September 22, 1891, and if you know, you may state?

A. Yes. He was on the line.

10. State if you know, at what time the crowd assembled on the west line of the Sac and Fox country where you say your father was at noon, made the race into said Sac and Fox land, and state how you know the time of day when said crowd made the race.

74 A. I do not know. I had a watch and John Hartman had one; it was 12 o'clock noon by these watches when we and the rest of the crowd made the race.

11. State how large a crowd was gathered at the point from which your father made the race into said Sac and Fox country at noon of September 22, 1891, and state when your father Richard A. Timmons first entered said lands, with reference to the time when the crowd made the race.

A. I did not count them. There was quite a crowd. He entered said land at the same time with the rest of the crowd.

12. State what persons were in the crowd assembled at this point, from which your father made the race, whom you then knew or now know.

A. John Hartman, W. L. Hartman, C. A. Hartman, Sam Call, Ed Spencer, John Boling, Ot Aadair, —— Darrow, R. A. Timmons.

J. H. EVEREST,
Attorney for Defendant.

Service of a full and true copy of the foregoing interrogatories accepted and acknowledged, this 31st day of August, 1891, and I consent that a commission issue to take said deposition within — days of this date, hereby waiving the remainder of my time *to* filing cross-interrogatories.

G. W. ADAMS,
Attorney for Plaintiff, D. S. Timmons.

Subscribed and sworn to before me, a notary public, this 12th day of September, 1891.

WILLIS DAVIS,
[SEAL.] Notary Public.

Commission expires November 19th, 1891.

Endorsed: Timmons *vs.* Estes. Interrogatories to be propounded to David A. Timmons.

75 Certificate.

STATE OF KANSAS, } ss:
County of Sedgwick, }

I, Willis Davis, a notary public within and for the State and county aforesaid, do hereby certify that I caused the witness, David S. Timmons, whose name is subscribed to the foregoing deposition to appear personally before me within said county, on the 12 day of September, 1891; that said witness was first sworn to tell the truth, the whole truth, and nothing but the truth in answer to the interrogatories to be propounded to him in said contest case pending in the United States land office at Oklahoma City, O. T., wherein W. M. Estes is plaintiff and Richard A. Timmons is defendant; that the interrogatories attached to the commission to take said deposition were propounded to said witness separately and his answers thereto were by me written underneath the respective questions; that the whole of said deposition when completed was read over to said witness and that he subscribed the same in my presence and was then duly sworn thereto; that I am not a relative or an attorney for either party to the said suit, and that I am in no way interested therein.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on this 12th day of September, A. D. 1891.

[SEAL.] WILLIS DAVIS,
Notary Public.

My commission expires November 19th, 1898.

76 In the United States Land Office at Oklahoma City, O. T.

WM. M. ESTES, Contestant,
vs.
RICHARD A. TIMMONS, Contestee.

COUNTY OF POTTAWATOMIE, }
Oklahoma Territory. }

I, John C. Eaton, being first duly sworn deposes and say that I am the identical person who testified in the deposition before R. E. Wood, notary public, at Shawnee, O. T. on the — day of —— 1898, as a witness on behalf of the above named Richard A. Timmons. That I signed my name John Eaton, instead of John C. Eaton, as I am informed. That said deposition was given at the request of said Timmons and under the following circumstances, to wit: About two months before the aforesaid deposition was given Timmons appeared in the town of Shawnee and told me he had my name down as a witness in his land contest. I told him I could be no witness in land contest, as I was not here but in Kentucky when the Sac and Fox country opened for settlement. He said that made no difference. No one here knew where I was and that he could

fix that so there would be no trouble about it. He said there would be some *trouble* in it for me if I would testify for him. I told him I could do no such thing, as I knew nothing about it. (I understood that he was charged with "soonerism.") Sometime afterwards, perhaps nearly one month, he again approached — on the same line, only more specific. He then told me that he wanted me to swear, *just about as it is detailed in the deposition*, to wit: That we first met at Little River falls, and left there together on the morning of
the 19th of April, 1891, in company with Sam Ferguson and
77 W. H. Darrow, and went via Choctaw City on towards the
line of the Kickapoo and Sac and Fox lands, where I was to leave them near said line in the afternoon of the 21st, he then repeated his offer of "boodle" or "sorghum" as he would use the terms interchangeably, meaning that he would pay me a money consideration. I again refused as I had done before. It was not until — came to me the third time and said "it will now come off" referring to contest. I passed it by without more — a casual remark and left him. On the day I gave my deposition as aforesaid, I met Timmons in Shawnee when he invited me into a saloon to take a drink, which invitation I accepted. After we had a drink, he then said "Let's go up to 'Bob' Wood's office, Darrow is giving his deposition." I told him I did not care to go up, that I had no business there. He then invited me to take another drink, which I again did. He then insisted that we should go up and see what they were doing. I objected and he insisted. Finally I went up and in a few minutes Timmons invited me down to take another drink. This was repeated some five or six times. After I was intoxicated, scarcely knowing or comprehending anything, I yielded to his entreaties and gave the said deposition so as before said and he paid me about ten dollars that day, and I state fully and freely that whatever I have said in said deposition about having seen the said R. A. Timmons or W. H. Darrow at any time during the month of September, 1891, is absolutely false, and Timmons knew the same was false at the time he procured me to testify the same. I further state at the time this country, the Sac and Fox, was opened for settlement, I was in Whitley county, Kentucky, as sworn to by my former wife, Mrs. Cassie Rogers, nee Eaton. Under no circumstances would I have testified as I did had I not been in a state of intoxication, which intoxication was the procurement of the said R. A.
Timmons. Timmons paid me about ten dollars on the day
78 I testified. Since said deposition was given and after I became sober, I spoke to Timmons about what a difficulty he had got me into, that I expected to be arrested at any time. He told me to give myself no uneasiness about it, that he could find a John Eaton and would stand by me and would fight the case for me if I had any trouble about it. I make this sworn statement freely so as to correct as far as I can, the wrong I have done as aforesaid.

J. C. EATON.

Subscribed and sworn to before me this 24th day of January, 1899.
[SEAL.] WM. H. DODGE,
Notary Public.

My commission expires April 12th, 1891.

Endorsed: In the United States land office at Oklahoma City, O. T. Wm. M. Estes *vs.* Richard A. Timmons. Affidavit of John C. Eaton, on motion to reopen case. Filed Jan. 26th 1899. Seymour S. Price, reg.

79 In the U. S. Land Office at Oklahoma City, Okla. Ter.

WM. M. ESTES
vs.
RICHARD A. TIMMONS.

WHITLEY COUNTY,
State of Kentucky, } *ss.*:

I, J. W. Bishop of said county and State, being first duly sworn upon my oath, do depose and say:

I am fifty years of age and have resided in the said Whitley county all of my life. That I am acquainted with one John C. Bishop now residing in Shawnee, Oklahoma Territory, and who is commonly called and known by the name of John Eaton. That said party is my older brother and is called Eaton for the reason that our father died when we were quite young and my said brother John, has been called Eaton for several years and my said brother John, early in life was called Eaton and has been so called and known ever since. That my said brother has for several years, last past, resided in Oklahoma Territory and for a long time past his post office address has been Shawnee, Pottawatomie county, O. T. That some time in the year 1890 my said brother wrote me, from said Oklahoma that he had recently married a Sac and Fox Indian woman, named Cassie, and on the 15th, day of September, 1891, my said brother John and his said wife Cassie, came to my house near the town of Corbin, Whitley county, Kentucky, and remained in said county visiting relatives until some time in Feb. 1892. When *so* they so came to my house as aforesaid, they were traveling by two horse wagon and team and informed me and others that they had traveled with said wagon and team from their home and had been on the road about one month traveling from Oklahoma
80 to my house. That I know personally of my own knowledge that my said brother, John Eaton, was not in Oklahoma Territory at any time from the 18th day of September, 1891, to inclusive of the 22nd day of said month for the reason herein above stated and further affiant sayeth not.

J. H. BISHOP.

Subscribed and sworn to before me this 10th day of March, 1899.

STATE OF KENTUCKY, Whitley County, } *sct:*

I, Thomas Adkins, notary public, for the county and State aforesaid certify that the foregoing affidavit was signed and sworn to before me by J. W. Bishop, and I further certify that he is entitled to credit on oath. This 10th day of March, 1899.

THOS. ADKINS,
Notary Public.

[SEAL.]

My commission expires March 7, 1900.

I hereby acknowledge service of the within affidavit by copy thereof delivered to me pe-sonally this the 17th day of March, 1899.

J. H. EVEREST,
Attorney for Timmons.

Endorsed: In the U. S. land office at Oklahoma City, O. T. Wm. M. Estes *vs.* R. A. Timmons. Affidavit of J. H. Bishop on motion for new trial. Filed March 17th, 1899. Anton H. Classen, rec.

81 In the U. S. Land Office at Oklahoma City, O. T.

WM. ESTES
vs.
RICHARD A. TIMMONS. }

WHITLEY COUNTY, State of Kentucky, } *ss:*

I, Wm. Knight, being first duly sworn, upon my oath, depose and say, I am 34 years old and reside in the above county and State, and have so resided during my whole life. That I am well acquainted with one John C. Bishop, who is commonly known and called by the name of John Eaton. That said John Eaton, or John Bishop, is a brother to my mother. That for several years, last past, I received letters from my said uncle from Oklahoma, informing me that he was residing in said Oklahoma. That in the year 1890, he informed me by letter, that he had married a Sac and Fox Indian woman in O. T. or I. T. by the name of Cassie. That about the 15th day of Sept. 1891, my said Uncle John and his said wife Cassie, arrived at the town of Corbin, in said Whitley county, Kentucky. That I first met them at said time at the house of my uncle, J. H. Bishop, who then resided in the said town of Corbin. That they then and there informed me and others of our family relation-that they had traveled by wagon and team from Oklahoma, and had been on the road about one month, and they were so traveling with said wagon and team when they came to the house of my uncle

aforesaid. That they remained in said county, visiting relatives, until some time in the month of February, 1892, at which time they started on their return to Oklahoma, since which, I have received occasional letters from my said Uncle John, written and mailed at Shawnee, O. T., at which place he informed me in said letters he was residing. That I know personally of my own knowledge that my said Uncle John, was not in O. T. or I. T. from the 18th
82 of Sept. 1891, to and inclusive of the 22nd day of said month for the reasons herein above stated. And further affiant sayeth not.

WM. KNIGHT.

Subscribed and sworn to before me this 18th day of March, 1899.

——— ———.

Endorsed.

STATE OF KENTUCKY, }
County of Whitley, } *ss:*

I, Thos. Adkins, notary public for the county and State aforesaid, certify that the foregoing affidavit was subscribed and sworn to before me by the affiant, Wm. Knight, and I further certify that he is entitled to credit on oath. This March 10th, 1899.

[SEAL.] THOS. ADKINS,
Notary Public.

My commission expires March 7th, 1900.

I hereby acknowledge service of the within affidavit by delivering to me personally a copy of same. This the 17th day of March, 1899.

J. H. EVEREST,
Att'y — Timmons.

In the U. S. land office at Oklahoma City, O. T. Wm. M. Estes *vs.* R. A. Timmons. Affidavit of Wm. Knight on motion for a new trial. Filed on March 17th, 1899. Anton H. Classen, rec.

83 In the U. S. Land Office at Oklahoma City, O. T.

WM. ESTES }
vs.
RICHARD A. TIMMONS. }

WHITLEY COUNTY, }
State of Kentucky, } *ss:*

I, Wm. Knight, being first duly sworn, upon my oath, depose and say I am — years old and reside in the above county and State and have so resided during my whole life. That I am well acquainted with one John C. Bishop, who is commonly known and called by

the name of John Eaton. That said John Eaton, or John Bishop, is a brother to my mother. That for several years, last past, I received letters from my said uncle from Oklahoma, informing me that he was residing in said Oklahoma. That in the year 1890, he informed me by letter, that he had married a Sac and Fox Indian woman in the O. T. or I. T., by the name of Cassie. That about the 15 day of Sept. 1891, my said Uncle John and his said wife Cassie arrived at the town of Corbin in Whitley county, Kentucky. That I first met them at said time at the house of my uncle, J. H. Bishop, who then resided in the said town of Corbin. That they then and there informed me and others of our family relation- that they had traveled by wagon and team from Oklahoma, and had been on the road about one month and they were so traveling with said wagon and team when they came to the house of my uncle aforesaid. That they remained in said county, visiting relatives, until some time in the month of Feb. 1892, at which time they started on their return to Oklahoma, since which I have received occasional letters from my said Uncle John, written and mailed at Shawnee, O. T., at which place he informed me in said letters he was residing. That I know personally of my own knowledge
84 that my said Uncle John was not in O. T. or I. T. from the 18th of Sept. 1891, to and inclusive of the 22 day of said month, for the reasons hereinabove stated. And further affiant sayeth not.

—— ——.

Subscribed and sworn to before me this — day of ——, —.

—— ——.

85 In the U. S. Land Office at Oklahoma City, O. T.

WM. M. ESTES
vs.
RICHARD A. TIMMONS.

WHITLEY COUNTY,
State of Kentucky, } *ss:*

I, J. W. Bishop, of said county and State, being first duly sworn, upon my oath do depose and say:

I am fifty years of age, and have resided in the said Whitley county all of my life. That I am acquainted with one John C. Bishop now residing at Shawnee, Oklahoma Territory, and who is commonly called and known by the name of John Eaton. That said party is my older brother and is called Eaton for the reason that our father died when we were quite young and my said brother John was raised by an uncle to our mother by the name of Eaton, and my said brother John early in life was called Eaton and has been so called and known ever since. That my said brother has

for several years, last past, resided in Oklahoma Territory, for a long time past his post office address has been Shawnee, Pottawatomie county, O. T. That some time in the year 1890 my said brother wrote me, from said Oklahoma, that he had recently married a Sac and Fox Indian woman named Cassie, and on the 15th day of September, 1891, my said brother John and his said wife Cassie came to my house near the town of Corbin, Whitley county, Kentucky, and remained in said county visited relatives until some time in Feb. 1892. When they so came to my house as aforesaid they were traveling by two horse wagon and team and informed me and others that they had traveled with said wagon and team
86 from their home and had been on the road about one month traveling from Oklahoma to my house. That I know personally of my own knowledge that my said brother, John Eaton, was not in Oklahoma Territory at any time from the 18th day of Sept. 1891, to or inclusive of the 22nd day of said month, for the reason herein above stated and further affiant sayeth not.

—— ——.

Subscribed and sworn to before me this — day of —— 1899.

—— ——.

87 EX. A.

Witness duly sworn.

In the United States Land Office, Okla. City.

W. M. ESTES
vs.
R. A. TIMMONS.

Involving Title to the South Half of the S. E. ¼ of Section 18 N., Range 4 East, I. M. June 10th.

Now, on this 24th day of June, 1898, pursuant and under the authority of the condition hereto attached, issued by Seymour S. Price and a register of the U. S. land office at Oklahoma City, and Anton H. Classen, receiver of the U. S. land office and directed to the probate judge of Cleveland county, Oklahoma, the parties herein, W. M. Estes, G. W. Adams, and R. A. Timmons and appearing in his own proper person and by his attorney J. H. Everest, the following proceedings were had.

In pursuance of written stipulations on file in the U. S. land office at Oklahoma City, O. T., the plaintiff proceeded to examine orally and the defendant cross-examined orally the witness OTHER ADAIR, who being duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

88 Q. State your name, age, residence and occupation.

A. My name, Other Adair, age 27, farming is my occupation. Reside five miles east of Norman, in Cleveland county.

Q. State if you are acquainted with R. A. Timmons, the contestant.

A. Yes sir, I am.

Q. How long have you known him?

A. About six or seven years; maybe longer or not so long. I don't remember.

Q. State if you remember when the Sac and Fox and Pottawatomie were open to settlement.

A. Yes, I remember that time.

Q. Were you or were you not acquainted with Mr. Timmons at or before that time?

A. Yes sir. About that time.

Q. State whether or not you know of the location of the land in controversy.

A. Yes sir, I do. I know about where it is at.

Q. State when you first saw this land with reference to the opening of the Sac and Fox country for settlement.

A. Well, I believe I saw it a few days before the opening.

Q. About how many days before the opening?

A. It seems like two or three days at the best of my knowledge. I won't be positive.

Q. Where were you with reference to the land those two or three days and up to the opening?

A. Well, we were in camp S. E. of Mr. Timmons' place. I think, on the adjoining quarter.

Q. Who were with you in camp at the time and place of which you speak?

89 A. Well, there was myself and Mr. Timmons, John Boling, a man by the name of Barr, I believe they call him.

Q. When you say Mr. Timmons was with you, do you mean the contestant now sitting in the room?

A. I mean Mr. Timmons here present.

Q. You may state whether or not at any time prior to the hour the Sac and Fox country was opened for settlement you saw Mr. Timmons on this particular land in controversy.

A. I could not say for sure that I seen him on it. I saw him around there. We were about the camp there. It has been so long I don't remember.

Q. You speak of the camp where you and Mr. Timmons named were at; you may state whether or not that camp was within what is known as the Sac and Fox country.

A. Yes sir.

Q. If you can't say positively that you saw him on this particular tract of land during the time and days you were in camp, spoken of, state as nearly as you can how close to the line of this land or corner he was.

A. I could not swear whether he was or not; he might have been and he might not have been on it, I could not just say; we were at the camp and about it.

Q. How far was that camp from the S. E. corner of Mr. Timmons' land?

A. I could not say positively just how far it was. It might have been a quarter, more or less. It has been so long.

Q. Now what direction was that camp from the S. E. corner of Mr. Timmons' land?

A. As well as I remember, it was a southeast direction.

Q. State if you know, where Mr. Timmons was the night before the Sac and Fox country opened to settlement.

90 A. He was there in the camp with us, as well as I remember.

Q. When did you last see him on the day of the opening before 12 o'clock noon of that day?

A. I would not state the place I seen him, it was on the west side of that land.

Q. Do you mean to state he was on his land, or west of his land?

A. I could not say whether he was on his land. I don't know where the lines were. I don't think he was, to the best of my knowledge.

Q. How long before the opening hour or when the run was made was it that you and Mr. Timmons was at this particular — that we have last referred to?

A. I don't know just how long. We came over in the Kickapoo, went down to the river and watered our horses, was down there almost at twelve I thought it was. I had no watch. We came back then; that is, I and some of the other boys, I don't remember who. Mr. Timmons did not come back with us. He came on shortly with some other gentlemen. Pretty soon we stood around there a few minutes, I don't know just how long, until some of the boys thought it was twelve o'clock and then we started.

Q. Where did Mr. Timmons go in that start?

A. I don't remember. He went to this piece of land I suppose.

Q. State whether you saw him any more after he left that place before the run was made by parties on the Kickapoo line.

A. No sir. I started on my horse. I did not look back until I got on the hill and staked.

Q. And he was the first man?

A. No sir, the first man I seen was John Boling.

Q. State when you saw Timmons next after that run.

A. I could not say just how long it was. I could not say.

91 It has been so long I could not remember. It may have been an hour or so, more or less.

Q. How far from the Kickapoo line was the place where you and Mr. Timmons started on that run that you have just described?

A. Well, I could not say positively just how far it was. It may have been a quarter or a half a mile, more or less.

Q. The Kickapoo line was west of where you and Mr. Timmons were?

A. Yes sir.

Q. Were you and he in such positions as to see any parties gathered on the Kickapoo line?

A. No sir, I don't think we could.
Q. Why not?
A. It was hid in the timber, therefore hid our sight.
Q. After you ran out on the ridge as you have testified could you see the Kickapoo line?
A. Yes sir, I think I could.
Q. Did you see any parties at that time gathered on the Kickapoo line?
A. I did not, they might have been there. There were people all the way back.
Q. Do you mean back from where you were?
A. Yes sir. They had made the run, some of them ahead of me.
Q. In the run about which you have testified, you may state whether or not you went on a straight line to that ridge from where you started.
A. As straight as I could, after I got out of the timber.
Q. You may state whether your starting point was as far or farther from the ridge than the Kickapoo line was from the ridge.
A. I ran——

Objected to as leading sig.

—I suppose it was a little further to the Kickapoo.
92 A. Yes, I believe it was a little farther, not much difference, a little farther though I think.
Q. Did or did you not see the people make the run or start to make the run from the Kickapoo line?
A. No sir, I did not see them.
Q. When if at all, did your crowd, including Mr. Timmons, break up the camp S. E. of this land?
A. The morning before the opening, as well as I remember.
Q. Do you mean the morning of the day before the opening when the opening was at 12 o'clock that day?
A. Yes sir. I mean the morning of the opening.
Q. Where if at all did you establish your camp that morning with reference to the point you started from?
A. We ran from where our camp was.
Q. About what time of day did you establish that new camp?
A. We went over there some time about 9 o'clock I would judge.
Q. You may state whether or not Mr. Timmons went with you.
A. Yes sir, I think he did.
Q. Do you know whether he did or not?
A. To the best of my recollection, I think he did.
Q. You have testified that in company with Mr. Timmons you and other parties two or three days before the opening of the Sac and Fox country went into camp near the place and land in controversy. You may now state where you met with Mr. Timmons before going into camp.
A. Why I don't remember whether I met him here in Norman or at Mr. Boling's.

Q. You did see him at Mr. Boling's?
A. Yes sir.

93 Q. Now what if any arrangement did you and Mr. Timmons and other parties make before you started with reference to going over into the Sac and Fox country and for what purpose?

A. None whatever only Mr. Timmons and his son said we were welcome to go along with them.
Q. How did you go?
A. We went, taking our horses, rode in the wagon I think part of the way and on our horses part of the way.
Q. Whose wagon did you ride in?
A. Mr. Dave Timmons' wagon, I think.
Q. Did Mr. Timmons ride in the wagon?
A. Yes sir.
Q. What, if any, conversation did you have with Mr. Timmons the contestee, before starting, or on the way, as to where you would go?
A. Well, I don't know there was any conversation, only there was an understanding we were going to the opening of the Sac and Fox country.
Q. Did you at any time hear him say for what purpose he was going to the opening of that country?
A. I can't say that I heard Mr. Timmons say that he was going after land, but of course that was the intention of us boys.
Q. State, if you know, who drove the wagon up to that camping place the first time you went to your camp.
A. I could not say for sure but I think Mr. Dave Timmons drove all the way, as well as I remember.
Q. You may state whether or not while you were in this camp, the first one about which you testified, it was generally discussed among all of you, including Mr. Timmons, that the camp was within the Sac and Fox country.

(Objected to as leading and suggestive.)

94 A. I don't know as we discussed the matter; of course we all knew we was, there was nothing said about it that I now remember.

Q. You testified that when Mr. Timmons returned to you and the other boys after having been down to water your horses just before the run, that some other parties came back with him, you may state if you know who they were.
A. I was introduced to them, that was all.
Q. Who introduced you?
A. I am not sure. It was either Mr. Timmons or his son. I am not sure which, I think Mr. Timmons.
Q. You may state their names.
A. Mr. Hartman I believe is all the name I remember. In fact, I don't remember just how many there was.

Q. Do you remember whether there was more than one Mr. Hartman?

A. I won't be sure about that.

Q. Are you acquainted with the handwriting of Mr. Timmons?

A. I have seen his writing.

Q. Where was your post office address in October, 1895?

A. It was here at Norman.

Q. Did you receive a letter from Mr. Timmons at Norman about that time, 1895?

A. I can't remember at the time.

Q. Did you receive a letter from him here at Norman?

A. Yes sir, I did.

Q. About 1895?

A. I can't say as to the year.

Here counsel hands witness a letter and envelope.

Q. Now, after inspecting that letter, the address upon the envelope, what is your best judgment whether that is or is not the letter you received from Mr. Timmons?

95 A. As for the letter, the handwriting looks like Mr. Timmons' letter. As to the contents, I don't recollect.

Q. I will ask you if there was any one expression in the letter that you have just examined was in the letter that you received from Mr. Timmons?

A. There was one word in there that seems like it was in the letter that I remember.

(Here counsel for contestant offers as evidence, letter dated October 15, 1895, and signed Timmons, and asks that it be attached to the deposition of this witness, marked Exhibit "A," which letter is in words and figures as follows:)

(Here counsel for the defendant objects to the introduction of said letter as obviously irrelevant, incompetent and immaterial.)

Letter and envelope hereto attached and marked Exhibit "A."

Q. You say that there is one expression in this that you remember as having been in the letter that you received from Mr. Timmons, I will ask you to repeat.

A. "You don't know anything."

Q. That is all that you remember, that you remember distinctly?

A. Yes sir, that is all I now remember.

Q. You may state whether or not at any time since the opening of the Sac and Fox country you have had any conversation with Mr. Timmons with reference to what, if any portion of the land in controversy, he would give to you in case he was successful in the contest?

A. I believe he spoke something like this, that if he won his claim he would give us an acre or two or a lot or two or a home, I don't remember, it has been so long.

Q. State if at any time since this land has been in contest whether

or not Mr. Timmons has had any conversation with you with reference to you being a witness against him or what you would testify to?

96 A. No sir, he never did ask me what I would testify to, never did.

Q. Did he say anything to you about whether or not you were going to be a witness against him?

A. It seemed to me like he said that they would have me in the trial. I don't remember just what he did say about it, something like that.

Cross-examination by J. H. EVEREST:

Q. Mr. Othere, do you recollect what day of the month it was that Mr. Timmons and his son and Mr. Darrow and you and Mr. Boling left for the Sac and Fox opening?

A. No sir, I don't remember. It seems to me two or three days before the opening, three or four. I won't be positive.

Q. There were just five of you in the party?

A. Yes sir, there were just five of us in the party.

Q. The Boling you name is John Boling, your brother-in-law, is he not?

A. He is now, yes sir.

Q. Darrow's name is H. W. Darrow, is it?

A. I don't remember. I could not say whether it was or not.

Q. What time of day did you start to Mr. Darrow's house?

A. I don't remember. I could — say just when it was, some time in the afternoon.

Q. When did you reach the Sac and Fox line?

A. I don't remember just when it was, some time in the next morning.

Q. You immediately established a camp?

A. Yes sir.

Q. How far up the North fork of the Canadian did you stop?

A. About a mile or a mile and a quarter, I don't remember.

97 Q. Did you know at that time exactly where the line between the Kickapoo and the Sac and Fox were?

A. I did not know right at that time. I knew better afterwards.

Q. You went up there with the intention of getting a homestead yourself?

A. Well yes, I went with the intention of getting a piece of land.

Q. How long did you occupy this first camp that you made?

A. I don't remember just how long we were there, some two or three days, I don't remember, it has been so long.

Q. How far was that camp from the west line of the Sac and Fox country?

A. I suppose it must have been something over a mile.

Q. Are you willing to swear positively and beyond any possibility of mistake that that camp was within the Sac and Fox country at all?

A. Yes, I am satisfied that it was. I am sure that it was.

Q. Will you swear that that camp was on any of the lands opened to settlement by the President's proclamation of Sept. 18th, 1891?

(Objected to as improper cross-examination and obviously irrelevant.)

A. I could not tell you now whether it was or not, I don't know enough about the country. It seems to me that there was a man living on it.

Q. How long did you remain in that vicinity after the opening of the Sac and Fox country?

A. Two or three days, I don't remember.

Q. Was that the first time you had ever been up to that country?

A. Yes, that was the first time I believe.

Q. You have lived down here east of Norman ever since that have you?

A. Yes. There and here at Norman.

Q. Now I believe you state that Mr. Timmons was not on the Sac and Fox line when the signal was given?

A. No sir, he was there with us.

Q. Who was with you at the time the race was made?

A. Mr. Timmons and his son, Dave Timmons, Mr. Darrow,
98 John Boling and those people that came with Mr. Timmons.

Q. You mean by that, the three Hartmans and Sam Call, do you?

A. I don't know how many of the Hartmans there were, but I believe there was a man there by the name of Call.

Q. There were about nine or ten of you there in all, were there?

A. Yes, something like that.

Q. About how far north of the river were you when you say you started in the race?

A. About a mile. I don't remember.

Q. How close were you to what you say was the Sac and Fox line?

A. A quarter to a half a mile. I don't remember.

Q. Now concerning this letter which was handed you, when did you last see that letter before today?

A. I don't remember seeing that letter after I read it.

Q. To whom did you deliver it?

A. As well as I remember, I stuck it in the bureau drawer. I was sitting near it.

Q. Do you know how it got into the possession of the contestant?

A. I don't know I am sure.

Q. You are not able to swear that this is the same letter that you received or that this is the same envelope, are you?

A. No sir, I don't remember what was in the letter.

Q. At that time, 1895, the prior settlement contest of Timmons against Estes was pending in the Land Department?

A. Yes sir, I think it was.

Q. Mr. Adair, has there been any agreement between you and the contestant Estes or any one acting for Estes by which you and your brother-in-law John Boling are to receive five hundred dollars or any other sum of money for your testimony in this case?

99 A. There was nothing to me.

Q. Is it not within your knowledge that the contestant William Estes has made a mortgage for five hundred dollars for John Boling for your testimony in this case?

A. There was nothing. I don't know what there was to John Boling?

Q. Do you say that you do not expect to receive anything either directly or indirectly for your testimony in this case?

A. No sir, Estes said he would pay my expenses if *he* would come up here.

Q. That is Mr. Ezra Estes who is here present was it?

A. Yes sir.

Q. Do you recollect what day of the week the Sac and Fox opening occurred on?

A. No, sir, I do not.

Q. Do you recollect the day of the month it occurred on?

A. No sir.

Q. Do you know what year the Sac and Fox opening occurred on?

A. 1891, I believe. I don't remember.

Q. You recollect whether or not the opening was in the spring or fall?

A. I don't remember, could not say positively.

Q. Do you know the section, township, and range, of the tract in controversy in this case?

A. No sir, I do not.

Q. Have you been back to the vicinity of the place from which you made the run?

A. I could not designate the spot. I have been around Shawnee, but things have changed since then.

100 Redirect:

Q. In your cross-examination you state that you have been in the neighborhood of Shawnee since the opening, state whether you have been on this tract of land since the opening.

A. Yes, I have been there several times.

Q. About how long, as nearly as you can recollect the last time?

A. I can hardly recollect, about a year or so ago, a year or not so long I was at Mr. Timmons'.

(Signed) O. C. ADAIR.

Subscribed and sworn to before me this 24th day of June, 1891.

[SEAL.] B. F. WILLIAMS,
Probate Judge, Cleveland County, O. T.

The witness- S. H. Peters and J. S. Adair *is* excused from testifying at this time.

101 TERRITORY OF OKLAHOMA, } ss:
County of Cleveland, }

This is to certify that on this the 24th day of June, 1898, the witness O. C. Adair whose signature appears in the above and foregoing deposition and answers, was first sworn by me to testify to the truth, the whole truth and nothing but the truth; the said depositions were reduced to writing by Paul Mackey, said depositions were written and subscribed in my presence to which I hereby certify. Said depositions were taken at time and place specified in said notice for taking same, to wit: on this, the 24th day of June, 1898, at my office in the town of Norman, Cleveland county, Oklahoma Territory.

Given under my hand and seal this 24th day of June, 1898.

B. F. WILLIAMS,
[SEAL.] Probate Judge.

102 COPY OF "EXHIBIT A."

(Envelope.)

"Otis Adair, Esq., Norman, O. K. Territory." Postmarked "Tecumseh, Okla., 16th Oct. 1895."

(Letter reads as follows:)

EXHIBIT "A."

"Office of Choctaw, Oklahoma and R. R. Co. Townsite Department. Amos A. Ewing, Manager.

SHAWNEE, O. T., Oct. 15th, 1895.

DEAR OTE: John Boling was served with a subpœna to-day to go to Ok. City on- week from tomorrow to testify in my land case subpœnaed by W. J. Estes. Now you are not compelled to go unless you want too and I don't think you want too as I will do more for you and your family than any one else.

And if they attempt to bring you before the probate judge why you can hide out or you don't know anything about the matter. Tom has gone to the Seminole nation to work finishing a house the rest of the family is well and fast and the enemy is ours.

Respectfully yours, TIMMONS.

103 EX. "A."

United States Land Office, Oklahoma, Oklahoma Territory.

WILLIAM M. ESTES vs. RICHARD A. TIMMONS. } Involving the S. E. ¼ of Sec. 18, Tp. 10 N., R. 4 E.

This case being called for hearing this 12th day of September, 1898, the plaintiff appears in person and by attorney, G. W. Adams;

the defendant in person and by attorney J. H. Everest; and the following proceedings are had:

J. W. BOLING, being first duly sworn by the receiver, testifies as follows in behalf of plaintiff:

Q. State your name, age, residence and occupation.
A. J. W. Boling, age 27, my postoffice is Shawnee, O. T., painter.
Q. Are you acquainted with Wm. M. Estes and Richard A. Timmons, the parties to this contest?
A. I am.
Q. Are you acquainted with the land in controversy?
A. I am.
Q. Do you know its location?
A. Yes.
Q. How long have you known Mr. Timmons?
A. About ten or twelve years.
Q. If you saw him about the 18th of September, 1891, you may state where and under what circumstances.
A. About five miles east of Norman.
Q. At whose house?
A. My father's house.
104 Q. How did he come to your father's house and who was with him if any one?
A. He came in a wagon. Mr. Darrow and his son Dave Timmons were with him.
Q. How long did he remain at your father's house?
A. Two or three hours.
Q. When he left who went with him if any one?
A. Myself, Ote Adair, David Timmons, himself and Mr. Darrow.
Q. By what conveyance did the crowd leave in?
A. Two wagons and two teams and two on horseback.
Q. You may state to whom the wagons belonged and who were on horseback.
A. Myself and Mr. Adair were on horseback. One team belonged to Mr. Darrow I understood and one to Mr. Timmons. Mr. Dave Timmons.
Q. You may state whether you traveled all in company together or not?
A. About. Of course we were strung along the road at times, sometimes a mile apart and sometimes all together. We camped together nearly all the time.
Q. Where did you camp the first camp after you left your father's house?
A. In the Pottawatomie country.
Q. How far from Norman?
A. Probably 18 miles.
Q. Where did you make your next camp after leaving that one?
A. In the Sac and Fox country.

Q. At what point in the Sac and Fox country, with reference to the land in controversy?

A. About a quarter of a mile S. E.

105 Q. Southeast from which corner of the land?

A. The S. E.

Q. What day was that with reference to the opening of the Sac and Fox country for settlement? If you know?

A. It was about the 19th of Sept. 1891.

Q. Who went into camp with you at that time and place?

A. Mr. Timmons, Mr. David Timmons, Mr. Darrow, Mr. Ote Adair and myself.

Q. What if anything did Mr. Timmons say in your hearing after you crossed the Pottawatomie line?

A. He said we were in the Pottawatomie country. I asked him if we were all sooners and he said yes.

Q. What if any remarks were made at that time?

A. I believe about that time we heard the soldier's bugle and he said we wanted to dodge them fellows. I believe that was about all.

Q. State if you know from anything said by Mr. Timmons, why he went over in the Sac and Fox country, what was his purpose in going there?

A. He never said, that I remember of.

Q. State what if anything Mr. Timmons did in the Sac and Fox country near where you were camped, after you went into camp and before Sept. 22, 1891, with reference to ascertaining the numbers of any land there?

A. He went to a witness tree and opened it.

Q. You remember the numbers of the land that were disclosed when that tree was opened?

A. I do not. I was not close enough to tell. (See page 14.)

Q. About how far was it from the land in controversy?

A. It was right at the corner, the S. E. corner.

Q. Have you seen that tree since the 22nd of April, 1891?

106 A. I have.

Q. Have you read the numbers on it?

A. I have not.

Q. How long did you remain, you and Mr. Timmons and the company, in the camp southeast from the land in controversy in the Sac and Fox country?

A. We had two or three camps there, but that was our main camp. I think until the day of the opening—the day or the day before, I am not sure which.

Q. You may state whether Mr. Timmons was pretty continuously around that camp from the time you went into camp until the day of the opening or the day before?

A. He was there nearly all the time. He was out and walking around at times, don't know where he went.

Q. You may state where he was, if you know, the morning of the 22nd day of Sept. 1891?

A. He was in camp part of the time.

Q. Were you with him all of that morning or most of the morning?

A. Not all morning.

Q. You may state what Mr. Timmons did that morning up to about 12 o'clock noon of that day so far as you know?

A. He left camp along in the morning some time and said that he was going to the river; went there after water I believe.

Q. When and where did you see him first after he left camp to go to the river?

A. In camp again.

Q. At the same place?

A. Yes.

Q. About what time of day was it when he returned to camp that morning?

107 A. Probably 10 or 11 o'clock.

Q. About how long did he remain in camp at that place at that time?

A. Until 12, about.

Q. Was the camp that he returned to the one where you first went into camp when you went there on the 19 or had you removed camp?

(Objected to as leading.)

A. We had removed our camp.

Q. State where the camp was located that morning after you removed camp?

A. It was about ¾ of a mile east of the Kickapoo line or close to it.

Q. In what country?

A. The Sac and Fox.

Q. How far from the land in controversy?

A. Right on the place.

Q. What portion of the place?

A. On the south line about the middle, in a hollow.

Q. Did you see Mr. Timmons at or about 12 o'clock noon, September 22, 1891?

A. Yes.

Q. Where was he at noon, if you know, of that day?

A. On this same place.

Q. What did he do if anything at about 12 o'clock noon of that day?

A. He blazed a little black-jack tree there and said that was his home.

Q. About what time of day was it when you moved your camp the morning of the opening at the point where he started from?

108 A. I don't exactly remember whether it was in the morning or the evening before.

Q. Have you been over the locations of these camps and the land in controversy since that time?

A. I have been over the land but not the camps.

Q. Have you had any conversation with Mr. Timmons since the location on the day of the 22nd of Sept. 1891, with reference to his locating that land?

A. Once.

Q. What if anything did he say at that time in reference to it?

A. He said he was too old a man to go to the penitentiary and that he wouldn't go. Told me that one man wouldn't stand in the road.

Q. Has he or has he not made any other personal threats against you if you testified in this case or told about his entrance into the Sac and Fox country before time?

A. He said I would never get on the witness stand against him.

Q. What portion of the land if any did he propose to give to you if you would not go on the witness stand and testify about you and he being in there together?

A. At one time he said he would give me five acres and at another time $15.00.

Q. State whether or not Mr. Timmons ever said anything to you personally that if you told what you know he would shoot your head off or blow your head off.

(Objected to as leading and a cross-examination of his own witness.)

Question withdrawn.

Q. You may state whether or not Ote Adair was with you and Mr. Timmons from the time you left your father's house on the 18th of September, up to 12 o'clock noon of the 22nd of Sept. 1891?

A. He was about all the time.

109 Q. What were the surroundings of the various camps that you made together with Mr. Timmons in the Sac and Fox country? Were they in the brush or in the open ground?

A. The first camp we went in was on the hillside in the post oak timber; the next was down in the brushy hollow, timber there too; and the other one was right down on the river, no timber unless it would be scattering trees.

Q. How long did you stay down in camp at the river?

A. I don't know. We ate one meal there I remember.

Adjourned to 1:30 p. m.

1:30 p. m., met pursuant to adjournment.

Q. You may state whether or not in October, 1895, you had a conversation with Mr. Timmons, the defendant, in reference to the fact that he had written a letter to Ote Adair and was going to send such letter to him?

A. Yes.

Q. State whether at that time he showed you the letter addressed to Ote Adair.

A. He did.

(Here counsel shows to witness Exhibit "A" in the deposition of Ote Adair, taken in this case.)

Q. Please examine the address and state whether or not, to the best of your knowledge and belief that is the letter, or the envelope and the address shown you at the time.

A. That is the way he had it addressed, but I couldn't state positive. That looks like his handwriting.

Q. State whether or not you are acquainted with the handwriting of Mr. Timmons.

110 A. I have seen his handwriting several times but never paid any attention.

Q. State whether or not this is his handwriting, to the best of your knowledge and belief.

A. I couldn't state. That looks like the envelope he showed me and addressed the same way.

Q. Did he state to you at the time anything he had written in that letter?

A. Yes sir.

Q. State about what it was if you recollect.

A. He said that he had written to Ote Adair to not know anything about the case; that he didn't need to know anything about it; and that he wanted to get the letter to him; before Mr. Estes, I presume seen him.

Q. Now state if at any time, whether or not before the 22nd of Sept. 1891 and after you and Mr. Timmons and the others had gone into camp near the land in controversy, you heard Mr. Timmons say anything in reference to taking this particular piece of land, or if he did anything designating his claim to that land. If so, what did he say and what did he do?

A. He showed us the place and told us that was the place he was going to take.

Q. You may state whether or not he pointed out any of the corners to you.

A. None but the witness tree that he opened.

Q. State what if anything Mr. Timmons said about being in the Sac and Fox country any time during the time you were in camp there after the 19th.

A. He said that was the Sac and Fox country. He claimed to know.

111 Cross-examination by J. H. EVEREST, att'y for def't:

Q. Where have you resided since the opening of the Sac and Fox country?

A. In several places.

Q. Please state the different places and how long you remained in each.

A. Norman, and Shawnee, Oklahoma, are the principal places.
Q. What is your principal occupation or profession?
A. Painter.
Q. Has that been your business since the Sac and Fox country opened?
A. Yes sir.
Q. Where did you reside prior to the opening of Oklahoma?
A. In Wichita, Kansas.
Q. How long did you reside there?
A. I don't know that I can say; probably six or seven years.
Q. Can you give your place of residence in Wichita?
A. Yes sir.
Q. State what it was?
A. 741 Waco, part of the time.
Q. Was that where you were living just before you came to Oklahoma?
A. No sir.
Q. Give the address as it was just before the country opened.
A. It was in what was called the Alamo addition of Wichita.
Q. Are you the same J. W. Boling who corroborated an affidavit of contest for Ezra Estes against this defendant on the 10 day of Oct. 1895, said affidavit being sworn to before W. W. Ives, N. P.?
A. Yes sir.
Q. You received a note and mortgage on that date for $500.00 signed by W. J. Estes and Margaret A. Estes, did you not?

112 (Objected to on the ground that it is irrelevant, improper cross-examination and incompetent. If such mortgage was made of that date the mortgage itself is the best evidence as to who made it and all pertaining thereto.)
(Objection overruled. Plaintiff excepts.)

A. I did.
Q. You received that note and mortgage in whole or part compensation for your making that affidavit and for giving what information you pretended to have pertaining -- Timmons' entry into the Sac and Fox lands, did you not?

(Objected to upon the ground that it is incompetent cross-examination and irrelevant, does not in any way connect Wm. M. Estes with the pretended transaction or show that the same was done with his knowledge, and is incompetent.)
(Objection overruled. Plaintiff excepts.)
(And it is agreed that a like objection and ruling shall apply to each and every question on this line of examination; and exception is hereby saved thereto.)

A. I did.
Q. What was the consideration for that note and mortgage?
A. It was given to protect my life from that man settin' right yonder (pointing to Richard A. Timmons, the defendant).

Q. Will you explain to the court how that note and mortgage operated as a protection to your life, liberty or pursuit of happiness?

A. Yes sir.

Q. Go ahead and do so.

A. He threatened my life in two or three different places. And as you stated a while ago, I didn't have the money to take care of myself with. I needed money in case of any happening of that kind.

Q. In other words you got this note and mortgage to com-
113 pensate you for what you considered the risk in swearing that Mr. Timmons was a sooner? Is that it?

(Objected to as a miss-statement of the witness' testimony as he has testified to no facts of that kind or words in substance and effect the same; and as improper cross-examination.)

(Objection overruled. Plaintiff excepts.)

A. No.

Q. Have you any other explanation to offer as to why you demanded and received so large a sum of money as expressed by this note and mortgage for your testimony against Mr. Timmons?

(Objected to upon the grounds that it presumes facts not shown in testimony as there is no testimony showing that witness ever demanded or ever received a large amount or any amount of money on the note and mortgage indicated.)

(Objection overruled. Plaintiff excepts.)

A. I don't understand the question.

Q. Have you any other explanation to make as to why you received this note for $500.00 secured by a mortgage on real estate, at the same time that you made the affidavit for Ezra Estes on Oct. 10th, 1895, to the effect that Mr. Timmons was a 'sooner'?

(Objected to upon the ground that the question seeks to prove by oral testimony a portion of the subject matter in the mortgage as to the amount and the facts that it was on real estate and seeks to prove the contents of the alleged affidavit of corroboration of Ezra Estes by setting out matters contained therein, to wit: that Mr. Timmons was a sooner; that neither mortgage nor affidavit have been introduced as testimony.)

(Objection overruled. Plaintiff excepts.)

A. I have only the one explanation to give.

114 Q. You have named then, the only consideration for that note and mortgage?

A. He had threatened my life and I wanted to use that as a protection in law.

Q. You have never had to use any of this money to protect yourself against Mr. Timmons have you, so far?

A. I never had to use any of it.

Q. When was it that you say you first got acquainted with Mr. Timmons?

A. It was some time in the fore part of 1880. I don't know the year. I know I was quite a boy.

Q. You say that Mr. Timmons came to Mr. Adair's house east of Norman?

A. No. I didn't say so.

Q. When and where was it that you claim to have seen him a few days before the Pot. country opened?

A. At my father's house, five miles east of Norman.

Q. What day of the month do you say that Mr. Timmons came to your father's house, five miles east of Norman?

A. About the 18th.

Q. What day of the week was that, Mr. Boling?

A. I don't remember the day of the week.

Q. When did Mr. Timmons leave your father's house?

A. That sa*id* day.

Q. What time in the day?

A. I couldn't tell you. I think though that it was before noon.

Q. Where did you camp that night?

A. In the Pottawatomie country.

Q. How do you know it was in the Pottawatomie country?

A. Because I know the place that we camped at now.

115 Q. Do you know the place that we camped at now?

A. No.

Q. What was your purpose in going to the Sac and Fox country at that time?

A. Just to be "rubberin" around I guess is all.

Q. Did you try to get any land in the Sac and Fox country?

A. I made a run.

Q. You didn't make any homestead affidavit nor attempt to file on any land?

A. No. I stuck a pole on a claim.

Q. You were not of age then were you?

A. No.

Q. When did you reach the North Canadian river on that trip from your father's house?

A. The next day after leaving home.

Q. Where did you cross said river?

A. I don't know the name of the ford. We crossed at a point very near straight north of what we called old Shawneetown.

Q. Had you ever been over that country before?

A. No.

Q. Where did you make your first camp with reference to the North Canadian river?

A. Probably 18 miles south of the river I should judge.

Q. Where did you make your camp the second night with reference to the North Canadian river?

A. The river was in three directions. It was probably a mile and a half.

Q. North or south?

A. The river is in kind of a horse shoe. We were on the north side of the river.

116 Q. Did you then know where the Kickapoo line was exactly?

A. I know where Mr. Timmons told me it was.

Q. Where did he get that information?

A. He claimed to be a Government surveyor.

Q. Did he make any survey in your presence or to your knowledge of the Kickapoo line or any other line at that time?

A. He had no instrument that I seen.

Q. Can a Government surveyor cast his eye over wild country and tell the boundary line between two Indian reservations any better than anybody else?

(Objected to as improper cross-examination and calling for the opinion of the witness instead of facts.)

(Objection sustained.)

Q. You don't know as a matter of fact where the Kickapoo line was?

A. Not at that time.

Q. How long did you remain in the Sac and Fox country after noon of Sept. 22, 1891, when the country was opened?

A. Two days.

Q. Where did you go then and how long did you remain away from the Sac and Fox country?

A. I went back to Norman. Probably a year.

Q. When did you move up to the Sac and Fox country to reside there?

A. The day this Choctaw road ran into Shawnee—the 4th of July, 1895, I believe.

Q. Do I understand from your testimony that you state that Mr. Timmons didn't make any run into the Sac and Fox country at all on the day of the opening?

117 A. He made no run.

Q. Did he make any run into the country or in the country at all that morning; or any race for a claim?

A. No sir, he did not.

Q. According to your statement, he was in there all the time and just simply took his claim at 12 o'clock?

A. Yes sir.

Q. You moved your camp once, I understand, after you arrived at the Sac and Fox country?

A. Twice.

Q. Now which way did you move your camp first from where you first made it?

A. East, as near as I can recollect.

Q. And about how far from the first camp?
A. About two miles I should think.
Q. And where did you move it the second time?
A. On the land now in controversy.
Q. Now when was it that Mr. Timmons first made any threats to you against your life?
A. It was the day before that mortgage.
Q. You and Mr. Timmons were not on good terms then from that time on?
A. No. He wasn't especially.
Q. You didn't have any friendly conversation after that at all did you?
A. No sir. All I heard from him after that was names and bad language.
Q. When was it that you had conversation with him about sending this letter to Adair?
118 A. I don't remember.
Q. How long was that before he threatened your life the first time?
A. I think it was the same day. I think it was in the evening he made the threat, and in the morning of the same day it was that he written the letter.
Q. At any rate this conversation about sending the letter to Adair and the letter he showed you was before he threatened your life and while you were still on friendly terms?
A. Yes sir.
Q. Had you ever made any affidavits against Mr. Timmons prior to the 10th day of October, 1895, when you corroborated the affidavit of Ezra Estes?

(Objected to as improper cross-examination, immaterial and irrelevant.)
(Objection overruled. Plaintiff excepts.)

A. I believe not. I don't remember the dates but I believe that I didn't.
Q. Now as a matter of fact, wasn't this threat that was made against you by Mr. Timmons according to your statement, made because that he had learned that you had corroborated that affidavit of Ezra Estes?

(Objected to as improper cross-examination and immaterial.)
(Objection overruled. Plaintiff excepts.)

A. He hadn't learned anything in regard to it.
Q. It was after you had made the affidavit?
A. Let's see. He threatened me so many times—the first time was before the affidavit was made.
Q. As a matter of fact, the first time that you and Mr. Timmons had any trouble was after this affidavit was made and when you

were building a house on Timmons' land and he came to
119 you and told you to take the house and your personal effects and get off the land?

A. I was building no house on Mr. Timmons' land.

Q. You were working on a house on his land were you not?

A. I was not.

Q. When did you first disclose to any of the Estes family that you claimed to know that Mr. Timmons was a sooner?

A. I don't know how Mr. Estes found it out.

Q. The question is, "When did you first tell any of the Estes family that you claimed to know that Mr. Timmons was a sooner?"

A. I believe it was the morning that I made the affidavit; or the evening before, it might have been.

Q. That was more than four years after the Sac and Fox country had been opened to settlement and entry, was it not?

A. Three or four.

Q. Was any one present besides you and Mr. Timmons at any of these times that you claim that he has threatened you?

A. No sir. Not that I remember of.

Q. What relation, if any, are you by blood or marriage to Other Adair and other witness in this case?

A. He is a brother-in-law of mine.

Q. Did you divide any of this $500.00 fee with him as a protection to his life against the threats of Mr. Timmons?

A. I don't look out for any one's life but my own.

Q. How many days do you say that you remained in the Sac and Fox country after the opening?

A. About two.

120 Redirect examination by G. W. ADAMS, att'y for plaintiff:

Q. State whether or not you know the Kickapoo line to be located about where Mr. Timmons told you it was before the opening of the Sac and Fox?

(Objected to as a cross-examination of his own witness, and as grossly leading.)

A. Yes sir. Right close.

Q. You testified in your cross-examination with reference to a note and mortgage given by W. J. Estes and wife to you for the sum of $500.00. You may state whether or not William Estes, the contestant in this case, had anything to do with that note and mortgage or with its execution to you?

(Objected to as obviously irrelevant.)

A. I didn't know him at that time. Don't know whether he knew anything about it or not.

Q. State whether or not you have ever received any money on that note and mortgage from W. J. Estes or any other person.

A. I never did.

Q. State whether or not you now hold that mortgage.
A. I do not.
Q. You may state what you did with the mortgage and note.
A. I turned it over to Mr. Estes.
Q. When did you do that? About?
A. I couldn't tell. Last spring. A year ago last summer it was done, I believe.
Q. Have you ever claimed any interest in that note or mortgage since that time?
A. No.
Q. And you do not claim any now?
A. No.

121 Recross-examination:

Q. You say you never received any money on that note and mortgage at all, Mr. Boling?
A. I never received any.
Q. Have you received any other security or valuable thing in place of it?
A. No sir.
Q. Will you explain why it is, if you took this security to protect you from Mr. Timmons, that you released it while the case was still going on and while Mr. Timmons was still at large?
A. For two reasons: One was because I was going to leave the country and get out of his road; and the other was that I had made up my mind by that time that he was an old bluffer and that he wouldn't do what he said he would.
Q. And that was the reason that you were going to leave the country and get out of his road because he was an old bluffer?
A. That was the first part of it.
Q. Have you ever received any valuable thing or consideration either directly or indirectly from the Estes family for your affidavits, testimony or assistance, in any way, in defeating Mr. Timmons' claim for this land?

(Objected to upon the ground that it is improper cross-examination, wholly immaterial and irrelevant. The question does not tend to connect the contestant in this case with any supposed transaction.)
(Objection overruled. Plaintiff excepts.)

A. Nothing but my car fare and board from Shawnee here.
Q. Do you mean to tell this court that you voluntarily relinquished a $500.00 cinch as expressed by that note and mortgage on Estes and that you never received anything for said release or for your testimony in this case?

122 (Objected to as improper recross-examination; incompetent, irrelevant and immaterial.)
(Objection overruled. Plaintiff excepts.)

A. I do. Yes sir.

Q. When was it, Mr. Boling, that you went back and ascertained that the Sac and Fox and Kickapoo line was where Timmons told you it was in September, 1891?

A. I lived right close there and know the lay of the country since that time is how I know it.

Q. You didn't begin to live there until July 1895, when the Choctaw railroad went through?

A. No. I was there before that.

Q. Didn't the face of the country change a great deal by the breaking of the soil, the clearing of the forests, and the making of farms, immediately after the country——?

A. There wasn't so much change at that time.

Q. You didn't see any numbers on any of these quarter sections up there did you, so that you knew what quarters you were on before the country opened did you?

A. I seen 16 and 18.

Q. What corner of 18 did you see?

A. I don't remember but I believe that was the witness tree that Timmons cut open; believe it was the S. E. corner of 18 but won't say positive.

Q. You said a while ago that you was not close enough to see the numbers at that time did you?

A. I said I couldn't read them. I didn't understand them.

Q. Then as a matter of fact you didn't know any of the numbers at that time?

123 A. Only what Mr. Timmons said.

Q. Do you know H. W. Darrow, who has been around Shawnee a good deal, commonly called Gus Darrow?

A. Yes.

Q. Didn't you have a conversation with said Darrow within the last two weeks at Shawnee in which you offered to have the Estes family pay him $200 if he would come over and testify in this case that Timmons was a sooner; or words of like import and meaning?

(Objected to as improper re-cross; and immaterial.)

A. I did not.

Redirect examination:

(Adjourned to 9 a. m., Sept. 13th, 1898.)

(September 13th, 1898.—Met pursuant to adjournment.)

(Signed) J. W. BOLING.

Subscribed and sworn to before me this 13th day of September, 1898.

ANTON H. CLASSEN, Receiver.

124 Here counsel for plaintiff introduces and offers as testimony herein the deposition of Other Adair, taken before the probate

judge of Cleveland county pursuant to and under the authority of commission issued by the register and receiver of the United States land office at Oklahoma City and hereto attached; and further in pursuance of written stipulations on file in the U. S. land office, Oklahoma City, O. T.; together with Exhibits "A," purporting to be a letter from the defendant to the said Other Adair; and also Exhibit "AA," the envelope containing said letter, and asks that the same be considered as testimony on his behalf.

Counsel for the defendant objects to the introduction of the exhibit marked "AA" and the letter purporting to have come in said envelope for the reason that the same has not been identified positively by anybody and is therefore incompetent, irrelevant and immaterial.

Here plaintiff rests his case in chief.

Adjourned to 1:30 p. m.

125 1:30 p. m., met pursuant to adjournment.

Here defendant applies for a continuance and to take depositions, which application for continuance is granted by the register and receiver, to which action the plaintiff excepted.

Case continued to September 29, 1898, 9 a. m.

September 28, 1898, 9 a. m. plaintiff appears by his attorneys W. F. Harn and G. W. Adams; defendant appears in person and by his attorney J. H. Everest; and the following proceedings are had:

The defendant, to sustain his homestead entry, offers the following evidence:

Deposition of W. L. Hartman, taken by the clerk of the district court of Garfield county, O. T., on June 3, 1897, pursuant to a commission issued May 28, 1898.

Here counsel for plaintiff objects to the introduction of W. L. Hartman and moves for the suppression of said deposition, for the following reasons, to wit:

First. The certificate attached to the said deposition does not conform to the statutes of Oklahoma Territory in this, that it fails to show that the deposition was reduced to writing by some proper person, naming him, as provided by section 4249, under the head of Civil Procedure, of the Oklahoma statutes of 1893; and also by section 4244 of the same statutes;

Second. The said depositions were not taken in accordance with rule 28 of the Rules of Practice of the Department of the Interior, in this, that the interrogatories appended to the petition were not written out as required by that rule, and the answers thereto inserted immediately underneath the respective questions.

Third. That the certificate attached to the said deposition does not state the facts as they appear in the deposition itself, in
126 this, that the certificate shows that the questions and answers were written out separately whereas the deposition accom-

panying the said certificate on its face shows that the interrogatories were the original interrogatories propounded to the witness, which shows that the deposition filed is not the same deposition to which the certificate was originally attached, evidently.

(To which latter statement as the conclusion of the attorney, counsel for defendant objects.)

Fourth. That said certificate does not show that the said deposition was taken upon a date fixed by the receiver and register or that the same was subscribed and sworn to by the deponent at the time and place mentioned in the commission to take said depositions.

Fifth. The commission upon which the said deposition was taken is defective in this, that no date is fixed in the said commission for the taking of said depositions.

Defendant here offers the deposition of Clarence Hartman, taken before C. H. Ogden, notary public, of Ponca City, O. T., pursuant to a commission duly issued by the register and receiver of the U. S. land office on May 28, 1898, and asks that the same be marked "Exhibit Y," and read in evidence in his behalf.

By agreement the above objection is considered as made against the introduction of the deposition of Clarence Hartman, except as to the second ground of the objection to deposition of W. L. Hartman.

Here defendant offers in evidence the deposition of Sam Call, taken before Willis Davis, a notary public, on the 8th day of June, 1898, pursuant to commission issued from the land office May 28, 1898, and asks that the same be marked "Exhibit X" and read in evidence in his behalf.

127 Plaintiff objects to the introduction of the deposition of Sam Call and moves for the suppression of the same grounds set forth in the objection and motion to suppress deposition of W. L. Hartman; and by agreement is considered as having been made in detail.

Here the defendant offers in evidence the deposition of John Hartman, taken before H. M. Spaulding, a notary public, at North Enid, O. T., on June 3, 1898, pursuant to a commission duly issued May 28, 1898, and asks that the same be marked "Exhibit W" and read in evidence in his behalf.

By agreement, the same objection applies to this deposition, and the same motion is made by agreement to this deposition, as those to the deposition of W. L. Hartman, hereinbefore, except as to the second ground named in said objection and motion.

Here defendant offers in evidence the deposition of David S. Timmons and asks that the same be marked "Exhibit V" and read in evidence, said deposition having been taken before Willis Davis, N. P., at Valley Center, Kansas, on Sept. 12, 1898, pursuant to a commission duly issued by this land office Sept. 10, 1898.

To the introduction of which plaintiff objects and moves that the same be suppressed and not admitted as evidence for the following reasons, to wit:

That on the 13th day of September, 1898, plaintiff filed a motion to suppress said deposition upon the ground, among others, that the certificate of the notary was not in accordance with the rules of practice and the law; that upon same day the defendant filed his motion for continuance in said cause, in which affidavit he states, referring to said deposition, "that said deposition was duly taken and was returned to this office and filed therein on this 13th day of Sept. 1898; that said deposition is not accompanied by such
128 certificate from the notary public taking the same as required by the rules of practice governing such certificate and said deposition is therefore inadmissible as evidence;"

Second. That the certificate that now appears attached is not the certificate originally attached to said deposition at which the motion to suppress was directed.

Third. That said certificate now appearing and pretended to be an amended and corrected certificate has not been made in accordance with law and rules of practice.

Fourth. (Erased)

Fifth. That said deposition is not taken as required by the rules of practice, in this, that the officer taking the deposition did not cause the interrogatories appended to the commission to be written out and the answers thereto to be inserted immediately underneath the respective questions; and the certificate does not show that the same when completed was read over to the witness before subscribing the same.

Sixth. For the further reason that the commission to take said deposition was issued prematurely and before the expiration of the time allowed plaintiff in which to file cross-interrogatories as shown by the record herein.

Counsel for defendant here states that the commission to take said deposition was not issued by this office until after the close of departmental hours on September 10, 1898, to wit, not until the hour of 6 o'clock p. m. on said day; and further calls attention to the fact that the plaintiff filed no cross-interrogatories whatever within the ten days allowed him by law for the filing of the same.

129 In reply to the above counsel for plaintiff says that the above statement of the fact does not appear of record in the local office.

Here counsel for defendant asks that the contest clerk who issued said commission or the receiver of said office who signed it *to* make a statement as to the hour when said commission was issued and sent out from the local office.

Counsel for plaintiff objects to any oral statement by the officers of the land office as to the time of issuing the commission for the said deposition for the reason that the matter is of record and that record is the best evidence.

Objection overruled. To which plaintiff excepts.

Here contest clerk states that the commission referred to was issued

at about 10 minutes before 6 o'clock p. m., September 10, 1898, the issuance of the same being the last clerical work performed by her before leaving the office on said date; that she left the office at five minutes before six p. m. on said date, and deposited the letter containing commission in the post office with other mail.

It is hereby agreed that the typewritten certificate attached to said deposition is the one known as the corrected certificate and was received at this office on Monday, the 26th inst.

Seventh. Plaintiff further objects to the above deposition and moves to suppress the same for the reason that the commission to take said deposition was issued and signed after the closing and expiration of departmental hours.

Eighth. That the interrogatories were not written out anew as required by the rules of practice and the answers thereto written immediately under the same.

Here the defendant offers in evidence depositions of John
130 Eaton and H. W. Darrow, taken on the 28th day of September, 1891, before R. E. Wood, notary public, Shawnee, O. T., pursuant to commission duly issued from the U. S. land office on the 28th day of May, 1898, and asks that the same be read in evidence and marked Exhibit " U."

Here comes counsel for plaintiff and objects to the introduction of John Eaton and H. W. Darrow, upon the following grounds, to wit:

First. That it appears upon the face of the commission that the same was issued on the 28th day of May, 1898, and the date for the taking of the depositions was fixed or inserted in the said commission by some person other than an officer of the land office and at a time subsequent to the issuing of the same; that the records of the land office show that this cause was set for trial for June 10, 1898, and the commission shows the date for the taking of the said depositions to have been nearly three and one-half months after June 10, the day upon which the trial of said cause was to have been had.

Second. The notary taking the deposition of the said John Eaton fails to attach his certificate and seal to the deposition of the said John Eaton underneath the said John Eaton's signature, showing the fact that the said John Eaton had been sworn upon the particular date on which it is claimed he was sworn and gave his deposition.

Third. That the notary public failed to attach his certificate or jurat and seal and signature thereto, showing that the said H. W. Darrow was sworn and subscribed to the said deposition before him at the time claimed in the said deposition or at all.

Fourth. The said deposition was not filed in the said land office as required by section 4251 of the Oklahoma statutes of 1893.

131 Fifth That the certificate attached to the said depositions fails to show by whom the interrogatories and answers were written out as required by section- 4244 and 4249 of the Oklahoma statutes of 1893.

Sixth. For all of which causes plaintiff moves that the deposition of the said John Eaton and H. W. Darrow be suppressed.

In answer to the second objection made by the plaintiff, counsel for the defendant calls attention to the fact that the notary public states on page one of the deposition that the witness John Eaton was duly sworn; and that on page 8 of said deposition he states that said witness H. W. Darrow was duly sworn; and that in his certificate found on page 15 of said depositions, the signature and seal of said notary public appear to the certificate required by rule 29 of practice, showing that said witnesses were sworn, and subscribed to said depositions in the presence of said notary on the 26 day of September, 1898.

As a further objection to all of the foregoing depositions and in support of this a motion to suppress each and all of said depositions, the plaintiff sets forth the following grounds:

First. That the plaintiff was not notified of the time of taking the depositions of John Hartman, W. L. Hartman and Clarence Hartman Sam Call, John Eaton and H. W. Darrow, as asked by him in his motion filed May 28th, 1898, in the said land office, as provided for by section 1602, Oklahoma stat. 1893.

Second. Plaintiff was denied the right of oral cross-examination of said witnesses as requested in a motion filed on the 10th day of June, 1898, attached to cross-interrogatories filed for plaintiff in said cause.

Third. That the officers of the land office refused and failed
132 to notify plaintiff of the name and official character of the officers before whom said depositions were to be taken as asked for by plaintiff in a motion attached to the cross-interrogatories filed by plaintiff in the said cause.

Adjourned to 1:30 p. m.

1:30 p. m. met pursuant to adjournment.

Counsel for plaintiff further objects to each and every deposition heretofore offered by the defendant and moves for the suppression of each and every one of said depositions on the ground that the necessity for taking such depositions has not been shown as required by the rules of practice and the statutes of the Territory.

The register and receiver, ruling on the above objections to each of said depositions and motions to suppress the same, overrule said objections and deny said motions, to each and every part of which ruling and judgment the plaintiff at the time excepted and still excepts.

133 RICHARD A. TIMMONS, being first duly sworn to testify to the truth, the whole truth and nothing but the truth, (sworn by the register), testifies as follows:

Q. State your name, age, residence, and occupation.

A. Richard A. Timmons, age 57, post office Shawnee, O. T., farming.

Q. Are you the defendant in this action?

A. Yes sir.

Q. Were you in the Sac and Fox country, being a portion of the lands described in the President's proclamation of Sept. 18, 1891, at any time after the 13 day of February, 1891, and before noon of Sept. 22, 1891?

(Objected to as leading.)

(Objection overruled. Plaintiff excepts.)

A. I never was in the Sac and Fox country until after 12 o'clock noon of Sept. 22, 1891 at any time.

Q. Where were you living from Feb. 1891, when the act of Congress passed providing for the future opening of the Sac and Fox lands?

A. At Wichita, Kansas.

Q. Please state as briefly as possible your whereabouts from that time until the 17th day of Sept. 1891.

A. I resided all that time at Wichita.

Q. When did you first come to Oklahoma proper after the passage of said act of Feb. 13, 1891, and before Sept. 22, 1891?

A. I left Wichita on the morning of the 18th of September, came to Norman on the railroad on the cars,—for the purpose of going to the Sac and Fox country and Pottawatomie country.

Q. State briefly your whereabouts in detail from the 18 of Sept. up to 12 o'clock noon of Sept. 22, 1891.

134 A. After I got off the train at Norman, I went two miles or two miles and a half west, to where my son and Mr. Darrow were camped, hitched up our teams, went east through Norman and about nine miles east of Norman at Little River falls; from there north to Choctaw City, crossed the North Canadian river about three miles northwest of Choctaw on the morning on the 20th. We took a southeasterly direction down through the Kickapoo country and camped at Kickapoo springs the night of the 20th, and remained in camp until about 11 o'clock the morning of the 21st, and then moved down within about ¾ of a mile of the line of the Sac and Fox country. The morning of the opening we moved up onto the line. And at 12 o'clock noon we made the race.

Q. Did you hear the testimony of Other Adair given?

A. Yes.

Q. Were the statements made by him in that deposition with reference to your having camped in the Sac and Fox country and near the line before Sept. 22, 1891, true or not?

A. No.

Q. You may state whether or not you were in the Sac and Fox country at any time with the witness J. W. Boling before noon of Sept. 22, 1891?

A. No sir, I was not.

Q. What is the fact as to whether you ever made any threats against the said J. W. Boling prior to the 10th day of Oct. A. D. 1895,

when said Boling received a mortgage for $500, from one W. J. and Margaret A. Estes?

A. No sir, I did not.

Q. What were your relations with J. W. Boling at that time?

A. My relation was that he was living on my land at that time and accepting my hospitality and that our relations were what you might call good. After that time they were going to build a house there and I told him to take the house off or I would take it off for them, and they took it off.

Q. State what the attitude of the said John W. Boling occurred over the houses toward you, whether friendly or unfriendly.

(Objected to ——)

135 A. He was unfriendly.

Q. State what the fact is as to whether he went armed or made any threats against you after that.

A. I didn't pay any attention to him as to whether he went armed, didn't know and didn't care.

Q. State who was on the line between the Sac and Fox and the Kickapoo countries when you made the race at 12 o'clock noon of Sept. 22, 1891.

A. There was H. W. Darrow, W. L. Hartman, C. A. Hartman, John Hartman, Sam Call, David S. Timmons, John W. Boling, Ote Adair, Ed Spencer.

Q. Do you know one John Eaton?

A. I am slightly acquainted with him.

Q. Did you see him at any time before the opening of the Sac and Fox country? If so, when was the last time you saw him before the opening?

A. The last time I saw him was about 4 o'clock in the afternoon, Sept. 21.

Q. When did you make the run into the Sac and Fox country on the 22 of Sept. 1891, with reference to the time when the other people assembled there on the line made the race into the Sac and Fox country?

A. We all run together.

Q. How many people were assembled there on the line in your best judgment at or in sight of the point from which you made the race that day?

A. There was probably 100 people.

Q. Did you state to the witness J. W. Boling or the witness Other Adair at any time that you were in the Sac and Fox country before the opening?

(Objected to as leading and improper as no such matter was testified to by either one of the witnesses.)

A. No.

136 Adjourned to 9 a. m. September 30, 1898.

9 a. m., September 30, 1898.—Met pursuant to adjournment.

Cross-examination by W. F. HARN, att'y for plaintiff:

Q. Please state what time you started from Wichita, Kansas, to go to the opening of the Sac and Fox country.
A. The 18th of September, 1891.
Q. What time on the 18th?
A. In the morning.
Q. What time in the morning?
A. I think about 8:40.
Q. Did you go on a passenger train?
A. Yes sir.
Q. What time did you arrive at Norman?
A. I don't remember. Some time in the afternoon.
Q. Who went with you from Wichita to Norman on that trip?
A. There wasn't anybody.
Q. How did you happen to go west to Adair's after arriving at Norman?
A. I did not go west to Adair's.
Q. You went west where then?
A. I went west to my son's camp and Mr. Darrow's.
Q. Was there anybody else in that camp besides your son and Mr. Darrow?
A. No sir. I think not.
Q. What is your son's name?
A. David S.
Q. Where does he live?
A. He lives at Shawnee.
Q. Where is he now?
A. I do not know. I think he is at Shawnee now. He has been in Kansas.
137 Q. He was at Shawnee when you came over here the other day was he not?
A. Yes sir.
Q. Where does this Mr. Darrow live?
A. Mr. Darrow has no particular home.
Q. He has been living though at Shawnee lately hasn't he?
A. Some times at Shawnee, sometimes at Chandler, and some times at Thurston, Canadian county.
Q. Isn't he living at Shawnee now and wasn't he when you came over here?
A. Mr. Darrow was at Shawnee day before yesterday.
Q. Isn't it a fact that Mr. Darrow has been continuously at Shawnee for the past four or five weeks?

(Objected to as obviously irrelevant and immaterial, improper cross-examination.)

(Objection overruled. Defendant excepts.)
A. Yes.

Q. What time did you arrive at your son's camp west of Norman?
A. I think about two or three o'clock in the afternoon.
Q. Who did you find at that camp when you arrived there?
A. I found my son and Mr. Darrow.
Q. How did you go out to that camp? Walk?
A. Yes sir.
Q. Did you go by yourself or was there somebody with you when you went out?
A. I went out alone.
Q. Up to the time that you arrived in your son's camp had you met any person that you was acquainted with, at Norman or on the train down?
A. I don't remember of meeting any one that I was acquainted with.
Q. To refresh your memory, I will ask you whether the train from the north didn't arrive in Norman after three o'clock at that time.
138 A. I do not remember. It was some time in the afternoon.
Q. When you got to your son's camp what did you do?
A. They prepared dinner for me and I ate dinner.
Q. How long did you remain in camp with your son and Mr. Darrow?
A. I think about an hour.
Q. Then where did you go?
A. We hitched up our team and started east.
Q. Did you go through Norman?
A. Yes sir.
Q. Whose claim was your son camped on? Do you know?
A. No, I do not.
Q. Give exactly the direction by section line to your son's camp, the location of it.
A. Due west and north.
Q. How near a house was it?
A. Probably 50 rods.
Q. Do you know whose house that was?
A. I heard the name but I don't remember now what it was.
Q. Please describe the house.
A. A box house.
Q. Did you remain in Norman when you started east?
A. Only long enough to buy provisions, feed the teams.
Q. Where did you go to then?
A. We went right east.
Q. Where?
A. To Little River falls.
Q. You went direct to Little River falls from Norman did you?
A. Yes. We stopped, however, between that point.
Q. That is what I want to know. Where did you stop from Norman?

139 A. Stopped at Mr. Thomas Bolin's about four miles east of Norman.

Q. How long did you stop there?

A. Stopped there half or possibly three quarters of an hour.

Q. Stopped there long enough to feed and eat didn't you?

A. Some of the party did I believe.

Q. About what time was it when you left Bolin's?

A. I don't know exactly. I think about 5 o'clock.

Q. Who did you see at Bolin's that you know or now know?

A. I seen Mr. Tom Bolin, Mrs. Bolin his wife, Mr. John Bolin, Mr. Adair, Miss Jennie Bolin, Miss Ollie Bolin. I believe that is all that I know outside of our party.

Q. Did you talk to all these people there?

A. I presume I did. I am of a social turn of mind—talk to everybody.

Q. Do you remember of talking to Thomas Boling at that time?

A. Not in particular.

Q. Don't you remember of having a conversation with him there?

A. Not in particular.

Q. Where was your next stop after you left the Bolin house?

A. The next stop was at Little River falls.

Q. Now who left the Bolin house with you in going to Little River falls? Give the names of all the parties.

A. John W. Bolin, Ote Adair, David S. Timmons, H. W. Darrow and myself.

Q. What time did you arrive at Little River falls?

A. I think about dusk.

Q. Did you go into camp there?

A. Yes sir.

Q. When did you leave this camp at Little River falls?

A. Left it the morning of the 19th.

Q. About what time?

140 A. I think about 7 or 8 o'clock.

Q. Where did you go?

A. We started north.

Q. I didn't ask you where you started. I want to know where you went.

A. We went about a mile northwest of Choctaw City.

Q. How were you and Mr. Darrow and your son David Timmons traveling at the time you left Norman?

A. We were traveling in a wagon.

Q. What kind of wagons and how many?

A. Common lumber wagons. Two in number.

Q. How many horses did you have in your party?

A. There were four horses on wagons, two on each. John W. Bolin and Ote Adair were riding horseback—made six in the party.

Q. When you arrived at Choctaw City, what did your party consist of, horses wagons and persons?

A. Consisted of two lumber wagons, four horses; Samuel Ferguson, John Eaton, H. W. Darrow and myself.

Q. What became of John W. Boling and Ote Adair?

A. I do not know.

Q. You now swear that they left the party after leaving Little River falls and before arriving at Choctaw City?

A. Yes sir.

Q. Did they camp with you at Little River falls?

A. I don't remember whether they did or not.

Q. When did you last see them that you remember?

A. On the evening of the 18th.

Q. Where?

A. At Little River falls.

Q. What time in the evening was that?

A. About dusk.

141 Q. Then you didn't see them after you arrived there?

A. I don't remember seeing them any more until the 21st in the afternoon or the morning of the 22nd.

Q. Where did you see them on the 21st in the afternoon?

A. It was near the Kickapoo line or the Sac and Fox line late in the afternoon of the 21st or the morning of the 22nd.

Q. You speak of John Eaton. Is this the same John Eaton that has served a term in the penitentiary from the Sac and Fox country?

A. I do not know.

Q. Don't you know that he also served a term in the Federal jail of this Territory at Guthrie?

A. No sir, I do not.

Q. Don't you know that this same John Eaton is notorious over in that country as a whiskey peddler and a horse thief and has been in the hands of the deputy marshals ever since this country opened off and on?

A. No sir, I do not. I am only slightly acquainted with John Eaton.

Q. What time did you arrive at that point northwest of Choctaw City?

A. The evening of the 19th of Sept.

Q. State about the hour of your arrival there.

A. I think about 6 o'clock.

Q. Describe the point you stopped at.

A. That would be pretty hard to do on the river bottom.

Q. How far from Choctaw City?

A. Possibly a mile and a half and maybe two miles. I don't know the exact distance.

Q. Did you go through Choctaw City?

A. Yes.

Q. Why did you go northwest of Choctaw City in going to the Kickapoo country?

142 A. We were told there was a good ford there and that the other ford was not good northwest.

Q. How long did you remain at this point about a mile northwest of Choctaw City?

A. Remained all night.

Q. Who was with you at this point a mile northwest of Choctaw City on the evening of the 19th and the morning of the 20th?

A. H. W. Darrow, Sam Ferguson, John Eaton and myself.

Q. What had become of Dave Timmons?

A. I don't know.

Q. Did he go off with John Boling and Ote Adair?

A. I couldn't say whether he did or not.

Q. You were not paying very much attention to these members of your party at that time for some reason or other were you?

A. There was some of them that I had no use for.

Q. I presume Dave was one of them, was he?

A. No, he was not.

Q. Then that was not the reason was it?

A. That was the reason in part.

Q. If you hadn't any use for Bolin and others how does it come that you got so intimate with Bolin afterwards that you had him live on your land?

A. Thomas Bolin is a comrade of the grand lodge. I also belong to the same order and am in duty bound to aid him in every way that I can. With this Thomas Bolin came himself and family, which constituted John Bolin, his son, Frank Bolin, another son, Ed Bolin, his brother, Bolin's wife and daughter.

Q. How did it happen that John W. Bolin and Ote Adair
143 started out on that trip with you.

A. I don't know.

Q. What time did you leave that camp northwest of Choctaw City?

A. The morning of the 20th of Sept.

Q. What time?

A. About 7 or 8 o'clock.

Q. Where did you go to?

A. We went northwest until we crossed the river.

Q. How far was your camp from the river at the place where you crossed it?

A. I think about a mile. Possibly a mile and a half.

Q. Who crossed the river with you?

A. H. W. Darrow, Sam Ferguson, John Eaton, and myself.

Q. Did you still have your two wagons and four horses with you?

A. We had two wagons and four horses.

Q. Did you have anything else with you?

A. Had our camp equipage and provisions.

Q. Then if I understand you correctly, your party consisted of yourself, H. W. Darrow, Sam Ferguson and John Eaton, four horses, two farm or lumber wagons, and your provisions and camp equipage. Is that right? Did that comprise all your outfit at that time?

A. Yes sir, I think that comprised about the outfit.

Q. Then where did you go after you crossed the ford?

A. We went in a southeasterly direction, following the North Canadian river in the Kickapoo country.

Q. Where did you go and where did you stop?

A. We stopped at Kickapoo springs.

Q. What time?

A. Along in the evening.

Q. About what time?

144 A. I don't remember. Probably five or six o'clock and maybe later.

Q. How long did you stay there?

A. About 11 o'clock until the morning of the 21st.

Q. Who was in your party from the time that you left the point northwest of Choctaw City, up to 11 o'clock on the morning of the 21st?

A. The same party that camped with us the night before.

Q. Your outfit was the same also that you had with you at the time you left Bolin's?

A. No sir.

Q. What difference was there?

A. The difference of three parties.

Q. Your outfit was the same at 11 o'clock on the 21 of Sept. as it was when you left Little River falls as you have heretofore testified, was it?

A. It was the same that it was when we left Little River falls on the morning of the 19th.

Q. Who owned the two wagons and the four houses that was in your outfit on that trip?

A. From the camp west of Norman to Little River falls two of the horses belonged to my son and two belonged to Mr. Darrow; and from Little River falls to the Kickapoo springs two of the horses belonged to Mr. Darrow and two to Mr. Ferguson I suppose. One wagon belonged to Mr. Darrow and Mr. Ferguson said the other belonged to him.

Q. Who owned the other wagon from Norman to Little River falls?

A. The other wagon belonged to my son.

Q. Where did you go to from Kickapoo springs at 11 o'clock on the morning of the 21st of September, 1891?

A. We moved in a southeasterly direction to within about three quarters of a mile from the Sac and Fox line and camped.

145 Q. What time did you arrive at that camp?

A. Some time in the afternoon, possibly about 3 o'clock.

Q. Now describe as minutely as possible the point in the Kickapoo country at which you stopped three quarters of a mile from the Sac and Fox line.

A. On section 13, the S. W. ¼, about a quarter of a mile northwest of the S. E. corner of the S. W. ¼ of sec. 13, tp. 10, N. R. 3 E.

Q. Was that prairie land or timber?

A. It is timber.

Q. Did you find anybody there when you went there?

A. There were people camped, not in our immediate vicinity however.

Q. Did you get acquainted with any of them?

A. No sir, I did not.

Q. Did you talk to any of them?

A. I don't remember talking to anybody outside of my own party.

Q. Did you meet anybody on your trip from Little River falls up to the point three quarters of a mile from the Kickapoo line that you were acquainted with at that time or became acquainted with at any time?

A. At Little River falls Mr. Ferguson came into my camp. I knew him in Iowa. Mr. John Eaton and he were together, and I got slightly acquainted with Mr. Eaton.

Q. Then those are the only persons with whom you talked that you now remember of, up to the time that you arrived at a point three-quarters of a mile from the Sac and Fox line in the Kickapoo country, were they?

A. I think so, with the exception of Mr. Darrow.

Q. At the point that you stopped, three quarters of a mile from the Kickapoo and Sac and Fox line were there any other persons in camp or did *you* camp by themselves out of sight of other people?

146 A. There didn't appear to be any in the immediate vicinity of our camp.

Q. After going into this camp three quarters of a mile from the Sac and Fox line what did you do and where did you go next?

A. We went down to the Kickapoo ford, Mr. Darrow and myself, ascertained where the Kickapoo and Sac and Fox line was exactly, returned to our old camp.

Q. About what time was that?

A. That was the evening of the 21st.

Q. What time did you get back to your camp?

A. About dusk.

Q. Did you see anybody down at the ford that you knew on that occasion?

A. Yes sir.

Q. Where did you go after you came back to camp that evening?

A. Camped there for the night.

Q. Where did you go to next?

A. Moved up onto the line.

Q. Where abouts on the line?

A. About 2 or 300 — south of the corner of sections 18 and 19.

Q. Was there a crowd there?

A. Yes sir, there was considerable crowd.

Q. About how many?

A. I don't know exactly; possibly 100 people in sight.

Q. Do you know where that road was that entered in Kickapoo country from Sac and Fox country?

(Objected to as indefinite, it being probable that there was more than one such road.)

A. There are two or three roads goes in there.

Q. How far were you from any road going from the Kickapoo country into the Sac and Fox country at that time you drew up to the line?

147 A. I don't know. I didn't see any road.

Q. How many persons were there in your immediate vicinity on the line at the time that you went there?

A. I can't tell exactly. They were shifting back and forwards on the line continually from 11 o'clock until the opening.

Q. Sam Ferguson made the run into the country with you did he not?

A. No sir. He did not.

Q. John Eaton did, didn't he?

A. No sir. He did not.

Q. Dave Timmons did didn't he?

A. Yes sir, he did.

Q. Did you see John W. Bolin and Ote Adair down at the ford when you went down there on the afternoon of the 21st?

A. No.

Q. What time was it that you arrived on the line?

A. We moved up on the line early in the morning.

Q. About what time in the morning?

A. It was probably between daylight and sunlight.

Q. How did you know where the line was at the time?

A. The line was well designated.

Q. How?

A. By the trees—that is, the witness trees—the marks being exposed at some future time—and the line was blazed, it is a range line.

Q. When did you first discover those marks?

A. On the evening of the 21st.

Q. Then you were up on the line on the evening of the 21st too, were you?

A. Yes sir.

Q. Who was with you?

A. Mr. Darrow.

148 Q. That all?

A. I don't remember whether my son was along or not, but I think he was.

Q. What became of John Eaton at this time?

A. I do not know.

Q. When did you see John Eaton last before the opening?

A. About 2 or 3 o'clock of the afternoon of the 21st.

Q. Did you go to the line from your camp on the afternoon of the 21st before you went down to the ford or after?

A. Afterwards.

Q. You said that you went down to the ford along about dusk. Then you were hunting for the blazed trees up on the line after dark were you?

A. No sir. I said we got back to our camp about dusk.

Q. Now you say that you were on the line on the morning of the opening about sun up at a point where the range line was blazed through the timber. Is that right?

A. Yes sir.

Q. Is there much timber there at that point where you stopped on the line?

A. Yes sir. It is all timber.

Q. And you went to the place on the line. Did you stay there until the hour of the run?

A. No sir.

Q. Where did you go to next?

A. Went back to our camp. We had moved our camp up in the morning nearer the line.

Q. What time in the morning did you move your camp up?

149 A. I don't remember. Probably about 8 o'clock in the morning.

Q. You mean that you moved your two wagons and four horses with camping outfit up to the line at the point from which you started into the country at about 8 o'clock on the morning of the opening. Is that right?

A. There was two wagons, but not the same two that came with us through the Kickapoo. My son came into our camp the evening of the 21st, and we had the same two wagons that we started from Norman with.

Q. How did your son happen to know where to find you up there in that woods?

A. I told my son where I intended to run from, or near that point.

Q. Notwithstanding the fact that that was all timber there he didn't have any trouble in finding you?

A. He possibly would have had considerable trouble if I hadn't met him at the ford.

Q. Now is there any land marks by which you can definitely locate the point from which you made the run into the country on the day of the opening?

A. Nothing more than the blazed line. No corner nearer than the section corner.

Q. Could you see up to the corner between 18 and 19?

A. Yes sir.

Q. Well, at the time of the run, please state how many people in your opinion there was scattered along between you and the corner between sec. 18 and 19.

A. There was very few.

Q. About how many people were there where you were?

A. In the immediate vicinity where we were I should think there was about thirty.

150 Q. Now give the names of all the persons that were on the line at the point from which you made the run that you knew at the time or that you have become acquainted with since that time?

A. There was W. L. Hartman, C. A. Hartman, John Hartman, John W. Bolin, Ote Adair, H. W. Darrow, David S. Timmons, Ed Spencer was in the immediate vicinity of myself. At or near the section corner W. J. Estes, Lulu Beard, Dr. Munger and Etta Ray—now Mrs. Henry Beard.

Q. That all?

A. That is all that I have become acquainted with.

Q. You are testifying now from your own personal knowledge, are you?

A. I am.

Q. Now were there any persons between your outfit and where you say W. J. Estes, Etta Beard and the others you have named?

A. There might have been.

Q. Was there any persons between you and W. J. Estes and others that you saw? I am not asking you what might have been.

A. I saw old gentlemen Beard in the rear of Munger in a spring wagon, and afterwards became acquainted with him.

Q. Now please answer my question.

A. I don't remember.

Q. Do you mean to say now that you remember distinctly who was at a point 300 yards north of you and can't tell as a matter of fact whether there was a single individual between you and those persons?

A. At about half past 11 o'clock we went down to the corner, we went down to the corner, we saw those two ladies, one on either side of the section corner. Dr. Munger was between the two ladies. They had stakes ready to stake those two quarters. We had a counsel and agreed not to stake any claim within half a mile.

151 Q. You went over this line between the point where you entered the Sac and Fox country and the corner between 18 and 19, about half past 11 on the morning of the opening, and after that you can't tell whether there was anybody between you and where you saw Beard and Estes, can you?

A. I don't remember whether there was any other parties there or not. I was not interested in any other parties.

Q. At that time though, you were interested in Estes, Beard, Munger, and others, weren't you?

A. We talked the matter over and thought it was very ungentlemanly in Estes to try and stake against the ladies.

Q. Who talked the matter over? You say "we."

A. Why, W. L. Hartman, an old gentleman, and myself.

Q. Did you stop to talk to anyone else on your trip from the point at which you entered the Sac and Fox country up to the point at which you met Estes?

A. Only my own party.

Q. W. L. Hartman was the only one was he on that trip up to where you found Estes, Munger and others?

A. I think the other boys were down by the corner, back and forth.

Q. A few minutes ago when I asked you who was up there with you, why didn't you mention the fact that the other boys were up there besides Hartman? How does it come that you singled out Hartman and mentioned him alone?

A. The old gentleman Hartman and I were about of an age. After he came into camp about 8 o'clock on the morning of the 22nd, we were continually together until the race was made. The other men were young men and would saunter around regardless of Mr. Hartman and I.

152 Q. What time did this conversation take place between you and Estes?

(Objected to as assuming that a conversation took place between witness and Estes.)

A. I think the first conversation that we had was in April, 1892.

Q. Did you talk to anybody when you went down to that corner where Estes and Munger and these other parties were on the morning of the opening?

A. No one except Mr. Hartman.

Q. Did Mr. Hartman talk to anybody in that crowd, consisting of Munger, Estes, and others, on the morning of the opening?

A. No sir. I didn't think he did.

Q. How long did you remain where Munger, Estes and others were at the corner between 18 and 19, on the morning of the opening?

A. Possibly about a minute.

Q. You didn't then talk to any persons there at all and none of them talked to you?

A. No conversations held except what was held in our own party. We didn't want to know anything; we wasn't getting any information.

Q. You didn't hear any conversation then between themselves did you?

A. No sir. I did not.

Q. Now pray tell me, how did you know that W. J. Estes was going to take the Lola Beard claim so that you could comment on it as you have heretofore?

A. We didn't know, but we supposed that was his intention.

Q. What made you suppose that Estes was going to take that claim any more than that Munger was going to take it?

A. Munger was in a position exactly over the section corner; the

two ladies each of them had stakes. And those two were all the claims that were to be staked—those two.

153 Q. That's all is it?

A. Yes.

Q. What did you do with your wagons when you moved up the line?

A. Left them in the old camp.

Q. How did you go into the country?

A. I went on horseback.

Q. Whose horse was that?

A. It belonged to my son.

Q. It wasn't your horse then?

A. I don't know. My son had the use of him right along, and he afterwards turned him over to me.

Q. You have just said it belonged to your son. Is that statement correct or not?

A. To all intents and purposes it belonged to him at that time.

Q. It wasn't your horse then at the time?

A. The answer would be yes and no both; because the horse he traded for that one belonged to me; but he had had the exclusive use of him for a year.

Q. Who staid with your camp outfit down at the old camp while you made the run?

A. No one of our party.

Q. Did you leave it in the care of somebody else?

A. No sir, we did not.

Q. Were there any wagons up on the line where you started from?

A. I didn't see any except Beard's.

Q. Was Beard's wagon where you started from?

A. No sir, it was not.

154 Q. Was anybody south of you at the time you started or for half an hour before that, on the line?

A. Yes sir.

Q. How far was the nearest outfit?

A. I don't remember any except those near the corner.

Q. Near the corner of 18 and 19?

A. Yes sir.

Q. How far south from where you entered the race could you see or did you have an unobstructed view along the line?

A. The view was somewhat obstructed by timber. Some of the brush had been cut away by men who were seeking homes, making the run. Possibly you could see a quarter of a mile south.

Q. What time did you leave the line?

A. We left the line at 12 o'clock.

Q. Was there a signal given?

A. Yes sir, there was a gun fired.

Q. Who fired that gun?

A. I don't know.

Q. Before the run you had made up you mind that you were going to run for this tract of land in controversy, hadn't you?

A. Not necessarily that tract more than any other.

Q. Who remained with you in that race to the tract in controversy?

A. W. L. Hartman was with me when I staked the claim. The rest of the party was scattered in every direction except west.

Q. Were you near any of the rest of the party except W. L. Hartman after you started?

A. I don't remember. They were all running. Everybody was running.

Q. Were there any others of your party with you when you staked except W. L. Hartman?

155 A. No, the rest of them ran on.

Q. You ran through timber, did you not, in that race?

A. Yes sir. It was all timber for about three quarters of a mile.

Q. Did you see any of your party after you got say a quarter of a mile into the Sac and Fox country in that race, except W. L. Hartman?

A. I don't remember of seeing any of them.

Q. Did all of you people come together after you made the race in the country that day?

A. Yes sir, I think the most of them camped with us that night.

Q. Who didn't camp with you that night of your crowd?

A. I don't remember. They came in to get something to eat, had their blankets, went out onto the several quarters that they made race for and I think they slept there over night.

Q. All of them?

A. No, I don't think all of them did. I think two or three of them stayed there. Old man Hartman's claim cornered with mine.

Q. Well, name those that stopped with you that night.

(Objected to as incompetent, irrelevant, and immaterial.)
(Objection overruled. Def't excepts.)

A. I don't remember who. I worked hard that afternoon to get up my cabin.

Q. Did Bolin and Ote Adair stop with you that night?

A. I don't remember. I think they laid out on the prairie.

Q. Name those that you do know that camped with you that night.

A. I don't think there was anybody but my son and Mr. Hartman.

Q. You mean W. L. Hartman?

A. His claim was right close to me, cornered with me.

Q. How far was this prairie from your camp that you think that John W. Bolin and Ote Adair camped on?

156 A. Northeast.

Q. You are the same Richard A. Timmons that testified on July 6, 1892, on behalf of the plaintiff in this land office, in the case

of Richard A. Timmons *vs.* Wm. Estes, involving the S. E. ¼ of sec. 18, tp. 10 N. R. 4 E., are you?

A. I am.

Q. I will ask you whether on that occasion you were sworn as a witness on your own behalf.

A. Yes sir. I was.

Q. By the register of the land office?

A. Mr. Leach, I don't know what position he held.

Q. On that occasion were you not asked the following question: And did you not make the following answer:

"Who were with you on that drive from Norman to the Sac and Fox line?" "A man by the name of Ferguson, an old neighbor of mine in Iowa."

A. I made that statement.

Q. Was not this question asked you and did you not give the following answer:

"Q. Did any person in particular go into the country immediately in your company, and if so, who was it?" "A. There was W. L. Hartman, John Hartman, Samuel C. Call, and I believe that was all I was personally acquainted with."

A. I don't know anything about it. When the cross-examination was coming in in that case the question was prior settlement.

Q. Do you remember who was present at the time you gave that testimony in the land office?

157 A. A man by the name of Houch, and a man by the name of Richardson; W. J. Estes was there as usual, and William M. Estes.

Q. Was not the following question asked you on that occasion and the following answer given by you in the presence of the persons you have just named:

"Q. When you say that you (we) went back to camp and got our horses and prepared to make the run, who do you have reference to besides yourself?" "A. Reference to Mr. Hartman and Mr. Call."?

A. Yes.

Q. Was not this question asked you and did you not give the following answer also in the presence of the persons you have just named as being present at that trial: "Q. Do you state now that you went in from the point you have described in company with the parties named and on horseback?" "A. Yes sir."?

A. Yes.

Q. On that occasion in the presence of W. J. Estes and others, were you asked the following question and did you give the following answer: "Q. Whose horse was that you rode?" "A. It belonged to me."?

A. Yes sir.

Q. In Mr. Estes' presence and in the presence of these others were you not asked the following question and did you not give the following answer: "Q. How did you take that horse there?" "A. I did not take him there."?

A. I did.

Q. In this same examination in the presence of W. J. Estes and others was not the following question asked you and did you not make the following answer: "Q. Where did you first meet your son?" "A. I met him in the camp."?

158 A. I don't remember anything about that. I met the boy at the river and we walked up to the camp together.

Q. In that same examination in the presence of W. J. Estes and others was not this question asked you and did you not make the following answer, immediately after the last question above: "Q. On the evening of the 21st?" "A. Yes sir."?

Here case is adjourned to 9 a. m. Sept. 30th, 1898, on account of illness of witness.

9 a. m. Oct. 1, 1898, met pursuant to adjournment.

Q. When did you first see W. L. Hartman after you left Wichita, Kans.?

A. On the Sac and Fox line on the 22nd day of Sept. 1891.

Q. When had you last seen the other Hartman before that time and where?

A. I don't know exactly. It was probably a month after that.

Q. When had you last saw Sam Call before the 22 of Sept. 1891?

A. I don't remember of seeing him at all.

Q. Do you mean to say that you never met him before he came to you with the Hartmans?

A. I don't remember of meeting him before that time.

Q. Now you spoke yesterday about having gone from your stopping place up to the corner of sections 18 and 19 and there you saw W. J. Estes and other parties. How close were you at that time to W. J. Estes?

A. Within two or three rods.

Q. And how close to Dr. Munger?

A. Probably 6 or 8 feet.

Q. Did you have any conversation with Dr. Munger at the time?

A. No sir, I did not.

Q. Were you on horseback or on foot at that time?

159 A. I was afoot.

Q. How long was that before you started to make the race?

A. Only a few minutes.

Q. About how many minutes?

A. 25 probably.

Q. And you are not certain whether anybody else went with you, save W. L. Hartman, up to where those people were?

A. I think we are the only two parties of my party that went up there.

Q. Was Mr. Hartman afoot also?

A. Yes sir.

Q. Where were your horses at that time?

A. They were up near the line.

Q. At what particular point?

A. 2 or 300 yards south of the section corner.

Q. At the time you started to make that run or a minute or two before you started, did you look north from where you were standing and from the point where you made the start, up the line?

(Objected to as immaterial and irrelevant.)

A. I don't recollect about that.

Q. On going from the point where you started from to make the race the time you went up to near where Mr. Estes was, did you pass any people on the line or immediately near it before you got to Estes or on your return back to the starting place?

A. I don't recollect.

Q. After you returned from Estes to your starting place did you look up or down the line?

A. Possibly I did. I don't recollect.

Q. Did you see any persons north or south of you at any time that you looked up or down the line from the time you went to your starting place the time you did start?

160 A. Yes sir. There — parties both ways, north and south.

Q. About how far from you, looking south, was the nearest parties that you saw?

A. Outside of my own party?

Q. Yes.

A. There was a number of parties with us outside of our own party whom I did not know.

Q. How were those parties and your own party standing with reference to facing the line? Were they standing single file, facing the line, or in a bunch?

A. I believe they were rather bunched, four or five on the line.

Q. Now about how many altogether in that squad or bunch?

A. I think about 30.

Q. About what length or distance did they cover, counting north and south along the line?

A. About 100 yards.

Q. Where were you standing with reference to the middle of that 100 yards north and south?

A. Well, at the north end.

Q. Were there any parties still north of yourself?

A. Yes sir.

Q. About how many?

A. I don't remember, four or five.

Q. Had you had any previous acquaintance with Dr. Munger before seeing him at the place and time you have referred to?

A. No sir, I had not.

Q. When did you next see him after that?

A. I think in October.

Q. Had you any previous acquaintance with the other parties whom you name as having seen at that time and place?

161 A. Yes sir.

Q. Give the names of those with whom you had an acquaintance previous to that time?

A. Etta Ray, now Mrs. Henry Beard; Lola Beard, now Mrs. Wilson; W. J. Estes that has been in the contest for seven years—know him pretty well; and Dr. Munger. I didn't know any of them prior to the opening.

Q. When did you say you saw Mr. Estes first after the 22nd?

A. I think it was about in December some time he and a man by the name of Grimes were together looking out the lines of the quarter.

Q. In order to refresh your memory I will ask you if you and him didn't meet near the S. E. corner of the tract in controversy on the 5th of the following October from the opening at or near your camp—in your camp?

A. It might have been. I have met him frequently since the opening.

Q. I will ask if you did not state to him at that time and place that when you made your run into the Sac and Fox country that you started south from where you were and from or near the river and ran in from the south.

A. No sir, I did not.

Q. You said that you left the house of Thomas Bolin on the 18 of Sept. 1891, about 5 o'clock in the afternoon. About how long did you and your outfit, those who were with you, remain at Boling's house?

(Question withdrawn.)

Q. What if anything was said between you and any of the Bolings or Adair at Mr. Boling's house after you and your party arrived about where you were going and what you were going to do?

A. I don't remember any conversation.

Q. Will you say there was nothing said between you and any person at Thomas Bolin's house at that time in regard to where

162 you were going and for what purpose you were going?

A. No sir. There might have been something said.

Q. You have no recollection of what was said or the substance thereof now, have you?

A. No.

Q. What, if anything, was said between you and John Bolin and Adair about the time you and they started out together as you have testified, with regard to where you and they would go and for what purpose?

A. No conversation of that kind to my knowledge with them parties.

Q. Was such conversation had with any parties at that time and place?

A. I think not.
Q. You say Adair and Boling started horseback?
A. Yes.
Q. How far did they travel in the immediate company of you and your crowd, they horseback and you folks in wagons?
A. Four or five miles.
Q. At the Little River falls, who were in camp first, your crowd or Ferguson and Eaton?
A. We was.
Q. What time of day did Eaton and Ferguson come into camp?
A. It was after dark.
Q. When you left your camp near the Sac and Fox line at daybreak as you testified, in company with W. L. Hartman, how did you and Mr. Hartman travel, on foot or horseback?
A. Mr. Hartman was not in my camp at daybreak on the morning of the 22nd.
Q. The first trip then you made up the line you made by yourself did you, on the morning of the 22nd?
A. Myself and Mr. Darrow.
Q. How did you and Mr. Darrow travel then?
A. We traveled on foot.
163 Q. Who, if any one, did you meet or see on that trip?
A. No one that we knew, on the line.
Q. How far up the line did you go with respect to the corner of 18 or 19?
A. Which would you call up, north or south?
Q. I suppose north.
A. We went about three quarters of a mile north.
Q. And how close to that corner?
A. We went to the quarter corner—located it, run the lines.

Redirect examination:

Q. Please state, Mr. Timmons, whether it was possible for you to have obtained at this time, the personal attendance and testimony at this land office of the witnesses, W. L. Hartman, Clarence Hartman, Sam Call, John Hartman, David S. Timmons, John Eaton, and H. W. Darrow?

(Objected to as improper redirect and calls for the opinion of the witness and not a statement of facts, and immaterial.)
(Objection overruled. Plaintiff excepts.)

A. No sir, I could not.
Q. State what efforts you made to get the witnesses to attend and testify in person.

(Objected to as improper re-direct and incompetent and immaterial for the reason that the depositions referred to were taken on commissions issued upon applications made by defendant in which applications the only grounds set up was the fact that the witnesses

resided more than fifty miles away from the land office. See affidavit filed May 17, 1898, and application to take the deposition of John Hartman, W. L. Hartman, Sam Call. See also application and affidavit for taking the depositions of John Eaton and H. W. Darrow, filed May 24, 1898.)

(Objection overruled. Plaintiff excepts.)

A. I had written personally to them after this case commenced and was informed that it would be impossible for them to come.

164 Q. That applies to all of the witnesses except your son, David S. Timmons?

A. Yes sir.

Q. Please state what reason, if any, exists for the non-attendance of David S. Timmons at this time.

A. David S. Timmons is sick.

Recross-examination by G. W. ADAMS, att'y:

Q. Is it not a fact that David S. Timmons has recently traveled from Kansas to Shawnee?

A. He traveled from Kansas to Shawnee.

Q. You said he was sick. Is he confined to his bed?

A. Not all the time.

Q. When did he come from Kansas to Shawnee?

A. I don't remember what time.

Q. About how many days ago?

A. Probably a week ago.

Q. Isn't it a fact that since his return he has been in and out of Shawnee from where you live, going around?

(Objected to as immaterial.)

(Objection overruled.)

A. He might have been up in town. I don't know. He don't live with me. He lives in a separate house. I haven't seen him in town but once.

Q. Don't you know that he was in Shawnee on the 28th, the day before this case was called.

A. I don't remember seeing him if he was.

Q. How far does he live from the business part of Shawnee?

A. A short half-mile.

Q. Did John Eaton ever refuse to attend at this land office and testify?

165 A. Yes sir, he did.

Q. When and where?

A. In Shawnee.

Q. What did he say?

A. He said he couldn't possibly attend, that he was willing to give his testimony.

Q. Don't you know as a matter of fact, Mr. Timmons, that the residence of John Eaton has been Shawnee and its immediate vicinity the last two or three years.

A. No. I do not know that it has.

Q. Don't you know that for the last year at least he and old man Hyatt have been baching there together in the east part of Shawnee?

A. No sir, I do not. Do not know where he lives.

Re-redirect:

Q. Please state what disease your son David A. Timmons is suffering from, if you know.

A. The doctor says it is malaria.

Re-recross:

Q. You don't know about that except what the doctor says.

A. No.

—— ——.

Subscribed and sworn to before me this 1st day of October, 1898.

—— ——, Register.

166 MARY BOLING, being first duly sworn by the register, testifies as follows in behalf of plaintiff Estes in rebuttal.

Q. State your name, age, and place of residence.

A. Mary Boling, age 52, live at Shawnee, O. T.

Q. Are you acquainted with Richard A. Timmons, the defendant in this contest?

A. I am.

Q. How long have you known him?

A. I have known him nine years or more.

Q. Do you remember the circumstances of Mr. Timmons, his son David, and another party coming to your house east of Norman a few days before the Pottawatomie and Sac and Fox country opened in 1891?

(Objected to as irrelevant and immaterial.)

A. I do.

Q. State about what time of day they came to your house at that time.

(Objected to as last above.)

A. To the best of my knowledge it was between 12 and 1 o'clock.

Q. In the day time?

A. Yes sir.

Counsel for defendant moves to strike out all of the testimony of this witness as incompetent, immaterial and obviously irrelevant.

(Signed) MARY BOLING.

Subscribed and sworn to before me this 1st day of October, 1898.
SEYMOUR S. PRICE, Register.

167 THOMAS BOLING, being first duly sworn by the register, testifies as follows in behalf of the plaintiff Estes, in rebuttal.

Q. State your name, age, residence, and occupation.
A. Thomas Boling, age 50, live at Shawnee, O. T., carpenter.
Q. Are you acquainted with Richard A. Timmons, the defendant in this case?
A. Yes.
Q. How long have you known him?
A. About nine years or a little longer.
Q. You may state if you saw him a few days prior to the opening of the Sac and Fox country and the Pottawatomie in 1891?
A. I did.
Q. Where did you see him?
A. I seen him at Norman.
Q. About what time of day was it when you first saw him there?
A. My recollection is that it was between 10 and 11 o'clock somewhere in the forenoon.

Counsel for defendant here moves to strike out all of the testimony of this witness as incompetent, irrelevant, and immaterial.
(Signed) THOMAS BOLING.

Subscribed and sworn to before me this 1st day of October, 1898.
SEYMOUR S. PRICE, Register.

Adjourned to 9 a. m. October —, 1898.

168 9 a. m., October 3rd, 1898.—Met pursuant to adjournment.

Now comes the counsel for the plaintiff and before the defendant has signed his testimony and asks that he be recalled for further cross-examination; and counsel further states that he informed the defendant on Saturday evening that he wished to recall him for further cross-examination. That the matter upon which further cross-examination is desired was inadvertently overlooked when witness was on the stand.

Here counsel for the defendant states that the defendant, Richard A. Timmons, was sick on both Friday and Saturday last, and went home to Shawnee, Sunday morning, and has not returned to Oklahoma City, counsel making this last statement without positive knowledge and from the fact that said Timmons has not appeared at counsel's office nor at the land office this morning. Counsel for defendant also calls attention to the fact that the defendant had closed his defense in chief and that the plaintiff has introduced two witnesses and taken their testimony before the above request was made.

Here counsel for plaintiff moves the register and receiver and bases such motion on his request above, that this case be continued until such time as the plaintiff may have an opportunity to further cross-examine the defendant herein.

Here counsel for defendant states that he has just received a telegram while this motion is being argued, showing that said defendant is sick. Introduced in evidence, marked Exhibit "J."

Motion of plaintiff overruled. Plaintiff excepts.

169 WILLIAM J. ESTES, being first duly sworn by the register, testifies as follows in behalf of plaintiff Estes, in rebuttal:

Q. State your name, age, residence, and occupation.

A. William J. Estes, age 61, live at Shawnee, O. T., farming is my occupation.

Q. You may state what if any relation you are to the plaintiff in this case, W. M. Estes?

A. Father.

Q. You heard Mr. Timmons' testimony in reference to seeing you at or near the corner of sections 18 and 19 on the morning of the 22nd of Sept. 1891, or just about 25 minutes before 12 o'clock noon of that day. You may state whether you were at or near that corner at that time?

A. I was.

Q. How near were you to Dr. Munger, say from 25 to 30 minutes before the opening up to the time the run was made?

A. I should judge it was about ten feet.

Q. Who was standing next to you?

A. Dr. Munger.

Q. Was he north or south from you?

A. He was south.

Q. Did you see any person approach within five or six feet of the Doctor from the south or within two or three rods of you from the same direction any time that morning before they started on the run, the crowd?

A. I did.

Q. You may state who they were.

A. Henry Beard. That's all.

Q. You know Mr. Timmons do you?

A. I do now.

170 Q. Did you see him at any time during that morning—forenoon?

A. No sir.

Q. State whether it would have been possible for one or two persons to have approached within two or three rods of you that morning without you having observed them, two men in company?

(Objected to as calling for the opinion and conclusion of the witness and not for a fact.)

A. No. It would have been impossible for anybody to have been that close without observation.

Q. And you have given the names of all the parties you saw coming from that direction, have you?

A. Yes sir.

Q. State what was the condition of the country where you were standing and immediately surrounding you, whether it was open, prairie or timber?

(Objected to as obviously irrelevant.)

A. At the corner there was quite a number of trees, four or five of those trees were the Government witness trees at the corner of 18 and 19—on the Kickapoo and Sac and Fox line. East from there, running down the section line on 19 was timber. On the south of where we were standing for about 100 yards immediately down the line there was a narrow strip of prairie on the Kickapoo side, probably four or five rods wide for that distance, that was so that a person could see everything there was in that direction.

Q. You may state whether or not the timber where you were standing and that portion of it which extended south along the lines from where you were standing was open and free of underbrush or otherwise.

A. It was not.

Q. You may state whether or not during the time you were there, you frequently looked up and down the line dividing the
171 Sac and Fox and Kickapoo countries, and if so, about how frequently?

A. There was no time after I think to exceed five minutes but what I observed the line both north and south as far as I could see.

Q. And how far could you see both north and south so as to distinguish a man or men?

A. North I could distinguish a man so as to tell who he was for 80 rods. I could see men half a mile from the point where I was standing, that were a horseback, north. South, I don't think that I could have seen a man either afoot or on horseback more than 125 yards, beyond this little prairie that I have described south. Timber, underbrush, prairie grass was so thick that I couldn't see any one at all beyond that distance.

Q. You may state how near to the corner of 18 or 19 was Dr. Munger standing about 25 or 30 minutes before the crowd started?

A. I had no means of ascertaining the identical corner only by the Government marks on the witness trees.

Q. You didn't understand my question. I ask you how near that corner of 18 or 19, the corner about which Mr. Timmons testified, was Dr. Munger standing 25 or 30 minutes before the opening.

A. I answered that question as near as I could answer it, and if you will allow me to make an explanation——

Q. Go on.

A. Taking the position of the witness trees and the way the box-

ing in the trees directed, we conjectured our corner at about where those lines would come to a common center from these trees, and according to our conclusion Dr. Munger was standing about ten feet from the corner of 18 and 19.

Q. Has that corner since been established by any proper survey?

A. Yes.

172 Q. Now was your conjecture correct as proven by the survey?

A. The corner is not where we conjectured it.

Q. How far out of the way was the corner established by the survey from where you thought it was?

A. About five feet.

Q. Do you remember of having a conversation with Mr. Timmons about the 5th of October, 1891?

A. I do.

Q. I will ask if he stated to you at that time that when he made the run into the Sac and Fox country on Sept. 22, 1891, that he ran from the river south of where you then were.

A. Yes sir.

Cross-examination by J. H. EVEREST, att'y for def't:

Counsel for defendant here moves to strike out all of the testimony of this witness, as incompetent, irrelevant, and immaterial.

Objection overruled. Defendant excepts.

Q. You were a witness in the case of Estes *vs.* Timmons, on the first trial, for prior settlement, were you not?

A. I was not.

Q. You were present during the trial?

A. I was.

Q. Mr. Timmons testified at that trial that he made the run from the west line of the Sac and Fox country, didn't he?

(Objected to as improper cross-examination, irrelevant and immaterial.)

(Objection overruled. Plaintiff excepts.)

A. He did.

Q. You did not then go upon the stand in your son's interests and detail any such conversation as you have testified to today, did you?

173 A. I did not for the reason that prior settlement was the issue.

Q. Mr. Estes, do you pretend to remember everything that took place on the Sac and Fox line for an hour before the opening of the Sac and Fox lands on the forenoon of Sept. 22, 1891, in your immediate vicinity and within your view?

A. I do not.

Q. You and Dr. Munger and Eita Ray and Lola Beard were near the section corner between sections 18 and 19 on the Sac and Fox

line for something like an hour and a half before the opening of said lands on said day, were you not?

A. About half an hour.

—— ——.

Subscribed and sworn to before me this 3rd day of October, 1898.

—— ——, Register.

174 Mrs. CASSIE ROGERS, being first duly sworn by the receiver, testified as follows in behalf of plaintiff Estes, in rebuttal:

Q. State your name, age, and place of residence.

A. Mrs. Cassie Rogers, age 32, live at Shawnee, O. T.

Q. How long have you resided at Shawnee, Mrs. Rogers?

A. It will be two years in January.

Q. Are you acquainted with John Eaton who now resides in Shawnee?

A. Yes sir.

Q. How long have you known him?

A. Eight years.

Q. You may state if you remember the circumstances of the opening of the Sac and Fox county for settlement by the whites?

A. Yes sir.

Q. You may state if you know where John Eaton was at that time.

A. We were on our way to Whitley county, Kentucky, where his people lived.

Q. You may state whether he and you were husband and wife at that time.

A. Yes sir.

Q. About what time did you leave the Territory to go to Kentucky?

A. The latter part of July before the opening.

Q. About where were you, if you remember, the 22nd day of Sept. 1891?

(Question withdrawn.)

Q. You say you started about the last of July. About what time did you arrive at your destination in Whitley county, Ky.?

A. It took us about two months.

Cross-examination:

Q. There are two Eatons residing in Pottawatomie or Lincoln county are there not?

(Objected to as improper cross-examination, and immaterial, irrelevant.)

(Objection overruled.)

A. I don't know of but one. There may be a hundred.

175 Q. Where has the John Eaton you refer to in your examination been residing for the last two years?

A. At Shawnee.

Q. You didn't see or hear him testify in this case, did you?

A. No.

Q. And you don't know that the John Eaton who testified in this case was your husband at any time, of your own personal knowledge?

A. It might have been another John Eaton, because I didn't see him at the time.

Q. What is the full name of the John Eaton who was once your husband?

A. John Calvin Eaton. J. C. Eaton, he signed his name.

Q. You will not swear then that John Eaton and John C. Eaton are one and the same person will you?

A. Of course I couldn't swear unless I seen him there. If I had seen him there I would know him.

Q. When were you and John C. Eaton married?

A. About June, 1890.

Q. Whereabouts?

A. Well, my folks objected to us being married and we had to run off to the Creek country and get married; but we had to get married over again under the Sac and Fox laws.

Q. This John C. Eaton who was formerly your husband is the same John C. Eaton who was arrested a number of times for selling whiskey to the Indians and for horse stealing?

A. I don't know that he was arrested for horse stealing, but he was arrested for bigamy.

Q. Now, when do you say the Sac and Fox opening occurred?

A. The 22nd of Sept. 1891.

Q. And how long was that after you had left the country with your husband?

176 A. Well, we left the latter part of July, and the opening was in September.

Q. Have you any record of when you reached this town in Kentucky where you say you were going?

A. No. I have no writing. But I know.

Q. Now how long did Mr. Eaton stay in Kentucky after you arrived?

A. We stayed from the time we arrived until January, 1892.

Q. You are a Creek Indian are you?

A. No, I belong to the Sac and Fox.

Q. You have remarried since you were divorced from John Eaton have you?

A. No, not since I have been divorced.

Q. Where do you reside in Shawnee?

A. The corner of Park and Ridgeweed Ave., No. 503.

Q. When did you first learn that you were wanted as a witness in this case?

(Objected to as improper cross-examination and immaterial.)

A. Sunday afternoon.

Q. What pay have you been promised or received for giving your testimony?

A. Well, it is always customary when any one is put to trouble that they have to be paid.

Q. How much are you to get for your testimony?

A. My expenses up here and back and $5.00.

Redirect:

Q. Are you acquainted with the handwriting of Mr. Eaton, your husband?

A. Yes.

Q. Have you seen him write his name frequently?

A. Yes sir.

177 Here counsel for plaintiff hands witness deposition of John Eaton, signed by himself, and asks that following question.

Q. You may state whether or not from your knowledge of his signature that name written to that deposition is his handwriting?

A. He generally puts it "J. C." That looks like his scratch.

Q. State whether that is his handwriting?

A. That is his handwriting.

Recross-examination:

Q. Can you read and write writing yourself?

A. Yes.

Q. Do you pretend to be an expert in handwriting so that you can identify any person's signature?

(Objected to as improper cross-examination, immaterial and irrelevant. Any person who has been in the habit of seeing another person write their name may testify as to the signature.)

(Overruled. Plaintiff excepts.)

A. No, not anybody's, but any one that I am acquainted and used to.

Q. When did you last see John C. Eaton's signature before this signature was shown you today?

A. He wrote to me about a year ago.

Q. Have you that letter with you?

A. I was disgusted with it; burnt it up.

Q. When did you see his signature last before this signature to the letter you refer to?

A. Couldn't state.

Q. How long since you ceased to live with him?

A. It has been five years this last July.

Q. During that time you have not seen his signature or what purported to be his signature more than once or twice have you?

A. I can't remember that I did, only that one letter.

178 Q. Now, how many times do you think you ever saw John C. Eaton write his name altogether?

A. Well, lots of times. I lived with him three years.

Q. You think you have seen him write his name as many as six times during your married life?

A. Yes.

Q. How many times?

A. I never counted them.

Q. What is your best judgment?

A. Well, one hundred or more times I know.

Q. Now will you state some of the documents that you saw your husband writing his name to?

A. Well, writing letters to his home back in Kentucky.

Q. And he always signed it "J. C. Eaton"?

A. Generally.

Q. Was Judge Adams your attorney in the divorce case?

A. No sir.

Q. Did you ever obtain a divorce from this man John C. Eaton?

A. Yes sir.

Q. In what court?

(Objected to as immaterial and improper cross-examination.)
(Objection overruled. Plaintiff excepts.)

A. At the Tecumseh court.

Q. What was your husband, J. C. Eaton's business?

A. No trade that I know of only a jack-leg carpenter.

Q. When you were married to him what was his business?

A. He was a carpenter, was building a house for my mother.

Q. Do you know where your husband, J. C. Eaton, was on the 28th day of Sept. 1898? Did you see him that day, know where he was?

A. No, I haven't seen him for quite a little while.

179 Q. When did you see him last?

A. About three weeks ago.

Q. He may have left Shawnee since that time?

A. He may have left. I haven't seen him.

——— ———.

Subscribed and sworn to before me this 3rd day of October, 1898.

——— ———, Receiver.

180 WILLIAM J. ESTES, being recalled, testifies as follows:

Q. You heard Mr. Timmons when on the stand testify that on the 22nd of Sept. 1891, he was at a point on the line between the Kickapoo and Sac and Fox countries some two or three hundred yards south from the corner of sections 18 and 19. You may state if you know what the condition of the country was in that vicinity at those points as to being timber or otherwise.

A. It was timber.

Q. Now, a man standing at 2 or 300 yards looking north, about how far could he see a man, looking through that timber?

A. He couldn't see beyond 75 yards north.

—— ——.

Subscribed and sworn to before me this 3rd day of October, 1898.

—— ——, Register.

Now comes the counsel for plaintiff and moves to strike from the records the depositions of John Eaton and H. W. Darrow for the reason that it appears upon the face of said depositions and each of them that at the time said depositions were given the deponents and each of them were residing in the town of Shawnee, Oklahoma Territory.

Objection overruled. Plaintiff excepts.

Here plaintiff rests his case.

Defendant rests.

Case closed.

181 In the U. S. Land Office at Oklahoma City, O. T.

WM. M. ESTES, Contestant,
vs.
RICHARD A. TIMMONS, Contestee.

COUNTY OF POTTAWATOMIE, }
Oklahoma Territory. }

I, John C. Eaton, being first duly sworn, depose and say that I am the identical person who testified in a deposition before R. E. Wood, a notary public, at Shawnee, O. T., on the — day of ——, 1898, as a witness on behalf of the above named Richard A. Timmons. That I signed my name John Eaton instead of John C. Eaton as I am informed. That said deposition was given at the request of said Timmons and under the following circumstances, to wit:

About two months before the aforesaid deposition was given Timmons appeared in the town of Shawnee and told me he had my name down as a witness in his land contest. I told him I could be no witness in land contest as I was not here but in Kentucky when the Sac and Fox country opened for settlement. He said that made no difference, no one here knew where I was and that he could fix that so there would be no trouble about it. He said there would be some boodle in it for me if I would testify for him. I told — that I could do no such thing as I knew nothing about it. (I understood that he was charged with "soonerism.") Some time afterwards, perhaps nearly one month he again approached me on the same line, only more specific. He then told me that he

wanted me to swear just about as it is detailed in the deposition, to wit: That we first met at Little River falls
182 and left there together on the morning of the 19th of April, 1891, in company with Sam Ferguson and W. H. Darrow and went via Choctaw City on towards the line of the Kickapoo and Sac and Fox lands, when I was to leave them near said line in the afternoon of the 21st. He then repeated his offer of "boodle" or "sugar" as he would use the terms interchangeably, meaning that he would pay me a money consideration. I again refused as I had done before. It was not until — come to me the third time and said "It will now come off" referring to contest. I passed it by without more — a casual remark and left him. On the day I gave my deposition as aforesaid I met Timmons in Shawnee when he invited — into a saloon to take a drink which invitation I accept-. After we had a drink he then said "Let's go up to Bob Wood's office. Darrow is giving his deposition." I told him that I did not care to go up, that I had no business there. He then invited me to take another drink which I again did. He then insisted that we should go up and see what they were doing. I objected and he insisted. Finally I went up and in a few minutes Timmons invited me down to take another drink. This was repeated some five or six times. After I was intoxicated, scarcely knowing or comprehending anything, I yielded to his entreaties and gave the said deposition so as aforesaid and he paid me about ten dollars that day. And I state fully and freely that whatever I have said in said deposition about having seen the said R. A. Timmons or W. H. Darrow at any time during the month of September, 1891, is absolutely false and Timmons knew the same was false at the time he procured me to testify the same. I further state at the time this country, the Sac and Fox, was opened to settlement I was in Whitley county, Kentucky, as sworn to by my former wife, Mrs. Cassie Rogers, née Eaton. Under no circumstances would I have testified as I did had I not been in a state of intoxication which intoxication was the procure-
183 ment of the said R. A. Timmons. Timmons paid me about ten dollars on the day I testified. Since said deposition was taken and after I became sober I spoke to Timmons about what a difficulty he had got me into, that I expected to be arrested at any time. He told me to give myself no uneasiness about it, that he would find a John Eaton and would stand by me and would fight the case for me if I had any trouble about it.

I make this sworn statement freely so as to correct as far as I can the wrong I have done as aforesaid.

(Signed) J. C. EATON.

Subscribed and sworn to before me this 24th day of January, 1899.

[SEAL.] WM. H. DODGE,
Notary Public.

My commission expires April 12, 1901.

184 United States Land Office.

OKLAHOMA, OKLAHOMA, February 1, 1899.

WILLIAM M. ESTES
vs.
RICHARD A. TIMMONS. } Involving the S. E. ¼ of Sec. 18, Tp. 10 N., R. 4 E., I. M.

Decision of Register and Receiver.

On May 21, 1894, defendant made H. E. No. 8736 for the above described land. Hearing was ordered by letter "H" of March 25, 1898. On April 9, 1898, W. F. Harn, att'y for plaintiff, applied to have notice of hearing issued. Said application was overruled for the reason that notice presented was irregular, to which plaintiff excepted. Attorney for defendant waived service; the case was set for hearing on June 10, 1898, 9 a. m. On the latter date both plaintiff and defendant appeared in person and by their attorneys. Case was continued on application of plaintiff to Sept. 12, 1898, to allow time to take depositions. On Sept. 12, 1898, both parties appeared in person and by attorney, case proceeded to trial. On Sept. 13, plaintiff rested his case in chief. On application of defendant case was continued to Sept. 29, 9 a. m. to which plaintiff excepted. On the latter date all parties appeared; and case was closed on October 3, 1898.

On January 27, 1899, a motion was filed by plaintiff to reopen case for the introduction of further testimony. Said motion was overruled for the reason that the showing made was insufficient. Plaintiff excepted.

185 Letter "H" of March 25, 1898, gives a full statement of proceedings had prior to the ordering of hearing herein.

The allegation on which hearing was ordered is as follows:

"That this affiant is an adverse claimant for said tract of land, having made settlement on the same on the afternoon of the 22nd day of September, A. D. 1891. That affiant is informed and believes and upon such information and belief states the facts to be as follows: That the said Richard A. Timmons entered upon and occupied a portion of the lands declared open to settlement and entry by the proclamation of the President of the United States, dated Sept. 18, 1891, after March 3, 1898, and prior to 12 o'clock noon, Sept. 22, 1891, contrary to the said proclamation and contrary to law; and that the said Richard A. Timmons went into the Sac and Fox Indian reservation about one week before the opening of said country to settlement, to wit, about one week before the 22nd day of Sept. 1891, for the purpose of looking up land and to pick out a piece of land for himself; and that on the morning of the 22nd day of Sept. 1891, the said Richard A. Timmons went into the Sac and Fox reservation for the purpose of looking up a claim for himself and did

select for himself a claim during his trips into the said Sac and Fox country as last aforesaid; that by the visits aforesaid the said Richard A. Timmons violated the said proclamation and law."

The question for us to consider is that of qualification of the entryman on Sept. 22, 1891. Did he enter the country during the prohibited period and thereby gain an advantage over others. The plaintiff introduced several witnesses to show this disqualification of the defendant, but they all failed to positively testify that they saw the defendant within said country during the said prohibited
186 period. On the other hand, defendant positively testified in his own behalf, and introduced depositions of others to show that he was not disqualified; that he was not within the country during the prohibited period.

The burden of proof is on the contestant. He must show by a preponderance of the testimony that the defendant is disqualified; that he entered the country during the prohibited period and gained an advantage over others. We are of the opinion that he has wholly failed to do so.

We, therefore, recommend that H. E. No. 8736 be held intact; and that the contest of William M. Estes be dismissed. Thirty days for appeal.

SEYMOUR S. PRICE, Register.
ANTON H. CLASSEN, Receiver.

Service of notice of the above decision hereby accepted, and receipt of a full, true and correct copy of said decision hereby acknowledged this — day of February, 1899.

187 And be it further remembered, that after filing said petition on said 12th day of July, 1901, said plaintiff filed his præcipe, and caused a summons to issue in said cause, which is in words and figures following, to wit:

TERRITORY OF OKLAHOMA, } ss:
Pottawatomie County, }

The Territory of Oklahoma to the sheriff of Pottawatomie county, Greeting:

You are hereby commanded to notify Richard A. Timmons that he has been sued by William M. Estes in the district court of Pottawatomie county, Oklahoma Territory, and that he must answer the petition of said plaintiff, William M. Estes, filed against him, in the clerk's office of said court on or before the 7th day of August, 1901, or said petition will be taken as true and judgment will be rendered accordingly.

You will make return of this summons on or before the 17th day of July, 1901.

Given under my hand and the seal of said court, this 12th day of July, A. D. 1901.

[SEAL.]

B. D. SHEAR,
Clerk Dist. Court,
By C. A. STAUBER, Deputy.

Filed July 15th, 1901.

B. D. SHEAR, Clerk,
By C. A. STAUBER, Deputy.

188 And be it further remembered that the aforesaid summons was duly served on the said defendant and the said sheriff of said Pottawatomie county made his return thereon, in words and figures following, to wit:

Suit Brought for Title to Real Estate.

If the defendant fail to answer, judgment will be taken for the sum $— with interest at the rate of — per cent. per annum from the — day of —— and costs of suit.

B. D. SHEAR, Clerk,
By C. A. STAUBER, Deputy.

I received this summons on the — day of —— at — o'clock — m., and executed the same in my county by delivering a true copy of the within summons with all the indorsements thereon to Richard A. Timmons, on the 13th day of July, 1901.

SIDNEY SCHRAM, Sheriff,
By J. M. BEARY, Deputy.

189 And be it further remembered that on the 31st of July, 1901, the above named defendant, Richard A. Timmons, entered his appearance in said action, and filed his demurrer to the aforesaid petition, which said demurrer, is in words and figures following, to wit:

In the District Court of the Third Judicial District within and for Pottawatomie County, Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff,
vs.
RICHARD A. TIMMONS, Defendant. } Demurrer.

Comes now the above named defendant, Richard A. Timmons, by his attorney, J. H. Everest, and demurs to the petition of the plaintiff herein for the reason that said petition wholly fails to state facts sufficient to constitute any cause of action against this defendant.

RICHARD A. TIMMONS, Defendant,
By J. H. EVEREST, His Attorney.

Endorsed: In the dist. court of Pottawatomie county, O. T. Wm. M. Estes *vs.* Richard A. Timmons. Demurrer. Filed in dist. court Pott. Co. O. T. July 31st, 1901. B. D. Shear, clerk. By A. N. Stauber, deputy.

190 And be it further remembered, that in said cause and court, on the 19th day of November, 1901, the said plaintiff obtained leave and permission of said court, by an order, duly made, to file an amendment to his said petition, which said amendment is in words and figures following, to wit, together with Exhibit "C," attached thereto and made a part thereof:

191 After having obtained leave of court comes now the above named plaintiff herein and further alleges as amendment to his petition and to paragraph seven.

That after said hearing was closed before the register and receiver of the local land office at Oklahoma City, O. T., and before decision was rendered thereon, plaintiff filed motion to reopen said hearing and that he be allowed to introduce further testimony which said motion was based on various affidavits, all of which affidavits and motions are hereto attached, marked Exhibit "B" and made a part hereof.

That said motion was overruled and disallowed by said register and receiver. And plaintiff further alleges that in overruling and disallowing said motion said register and receiver *was* directly influenced and deceived by the said false and fraudulent testimony of the said Richard A. Timmons, John Eaton and W. H. Darrow, and plaintiff further alleges that in so overruling and disallowing said motion said register and receiver misconstrued and misapplied the law in said cause in this, the rules and practice of the Land Department of the Interior require that in all cases where fraud or perjury has been committed in any hearing the same shall be reopened when such fact is shown to the office or department where pending regardless of technic*h*alities.

Plaintiff further amending said paragraph seven alleges that after said motion was so overruled he duly filed his motion for a new trial based upon various affidavits all of which affidavits and motions are hereto attached and marked Exhibit "C" and made a part hereof, which said motion was overruled and disallowed by said register and receiver and plaintiff further alleges in so overruling and disallowing said motion the said register and receiver were directly influenced and deceived by the aforesaid false and fraudulent

192 testimony of the said Richard A. Timmons, John Eaton and W. H. Darrow and in so overruling said motion, said register and receiver misconstrued and misapplied the law in said case in this, the rules and practice in the Interior Land Department require that where fraud and perjury have been committed in the hearing of said matter before the department or any land office that a new trial be granted.

Plaintiff further amending said petition and paragraph nine further

alleges that after the rendering of the said decision by the Hon. Secretary of the Interior, plaintiff duly filed motion to review said motion which motion was overruled and disallowed by the Hon. Secretary.

Plaintiff further alleges that the said Secretary was directly influenced in overruling and disallowing said motion by the said false and fraudulent testimony of the said Richard A. Timmons, John Eaton, W. H. Darrow, and plaintiff further alleges that in so overruling said motion the Hon. Secretary of the Interior misunderstood and misapplied the law in said matter, being deceived and influenced by the above false and fraudulent testimony, which said order overruling said motion for review finally closed the case before the Interior Department.

Endorsed: Amended petition filed Nov. 19, 1901, by leave of court. B. D. Shear, clerk, by C. A. Stauber, deputy.

193 E. M. W. DEPARTMENT OF THE INTERIOR, H. W. L.
GENERAL LAND OFFICE,
WASHINGTON, D. C., October 19, 1901.

MS. 120751.
Doc. 8–10886.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies of motion for reopening filed before register and receiver; motion for new trial together with copies of affidavits used with each of said motions, to wit: affidavits of G. W. Adams, W. M. Estes, John C. Eaton, J. W. Dishop and Wm. Knight are true and literal exemplifications of the originals thereof on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

BINGER HERMANN,
[SEAL.] Commissioner of the General Land Office.

194 EXHIBIT "B."

In the U. S. Land Office at Oklahoma City, O. T.

WM. M. ESTES, Contestant,
vs.
RICHARD A. TIMMONS, Contestee.

COUNTY OF OKLAHOMA, }
O'klahoma Territory, } *ss:*

I, G. W. Adams, being first duly sworn depose and say, that I am one of the attorneys for the contestant *and* in the above entitled contest, and in further support of the motion filed herein to reopen same for

further hearing state that I have had the particular charge of the same. That as such attorney immediately after the close of said hearing by the hon. register and receiver I opened correspondence with an attorney in Whitley county, Kentucky, for the purpose of locating the whereabouts of the John Eaton who testified on behalf of said Timmons. I learned that the said Eaton and his wife Cassie was in said county some time in the early fall of 1891, but could not learn the precise date. Subsequently and about twelve days since, the said John Eaton came to my office in Shawnee, Oklahoma Territory, after considerable conversation on the subject confessed to me that whatever he had said about being with Timmons in the month of September 1891, was absolutely false, telling me at the same time in detail the substance of what is embodied in his affidavit herein filed but I was not able by reason of sickness and being engaged in looking up other testimony in said cause to file motion herein until now. That said Eaton has promised affiant that if said cause be reopened that he will appear before the register and receiver and testify fully to the facts as set out in said affidavit— That I have used every possible diligence in the matter herein—

That said evidence of said Eaton, Bishop and Hartman
195 could not be procured on behalf of contestant to have been used in former hearing That if the said cause is reopened, contestant will be able to prove by the said John Eaton, J. W. Bishop, and J. H. Bishop that the said John Eaton was not in the Territory of Oklahoma, but in the State of Kentucky on the 21st day of September, 1891. And that said contestant will be able to prove by John F. Hartman, W. L. Hartman and Clarence A. Hartman as this affiant is informed and believes that the said Sam Call who swore on behalf of Timmons that he was with Timmons prior to the 22nd day of Sept. 1891, was not with him, as so sworn. That he did not see said Timmons until about 8 o'clock on the 22nd day of September, 1891.

That said motion for reopening is filed in good faith and not for delay.

G. W. ADAMS.

Subscribed and sworn to before me this 28th day of Jan'y, 1890.

ANTON H. CLASSEN, Rec.

Endorsed: In U. S. land office at Oklahoma City Ok. Ter. Wm. M. Estes *vs* R. A. Timmons. Affidavit of G. W. Adams in support of motion to reopen. Filed Jan. 28th, 1899. Seymour S. Price, reg. Service of affidavit accepted, Jan'y 27th, 1899. J. H. Everest, att'y def't.

196 In the U. S. Land Office at Oklahoma City, Oklahoma Territory.

WM. M. ESTES
vs.
RICHARD A. TIMMONS. } Notice.

To the above named defendant, Richard A. Timmons, and his attorney:

You are hereby notified that on the 27th day of January, A. D. 1899, the above named Wm. M. Estes will make an application to the United States land office at Oklahoma City, said Territory, and to the hon. register and receiver thereof, to have the above cause reopened on the ground and for the reason that said contestant has discovered, since the hearing of said cause, new and additional evidence in said cause upon the motion and affidavits filed herein.

G. W. ADAMS,
Att'y for Estes.

Notice of hearing accepted Jan. 26th, 1899.
J. H. EVEREST, Att'y Def't.

Endorsed: In the U. S. land office at Oklahoma City, O. T., Wm. M. Estes *vs.* Richard A. Timmons. Notice of application for reopening. Filed Jan. 26th, 1899. Seymour S. Price, reg. W. F. Horn and G. W. Adams, att'y- for Estes.

197 In the U. S. Land Office at Oklahoma City, Oklahoma Territory.

WM. M. ESTES, Contestant,
vs.
RICHARD A. TIMMONS, Contestee.

Based upon the records herein and the affidavits hereunto attached. Now comes the above named contestant, Wm. M. Estes, by his attorneys, before the decision rendered by register and receiver and moves the said register and receiver that the above contest be reopened and further hearing therein be granted. And that due notice of said hearing be given to the parties and that said contestant be permitted to introduce upon said hearing the evidence of said John C. Eaton, whose affidavit is filed herein, and that of the said John F. Hartman and J. W. Bishop, and J. H. Bishop, and such other material to his cause that he may tender at said further hearing.

W. F. HORNE &
G. W. ADAMS,
Att'ys for Estes.

Endorsed: In the U. S. land office at Oklahoma City, O. T. Wm. M. Estes *vs.* R. A. Timmons. Motion to reopen contest for further hearing. Filed Jan. 27th, 1899. Seymour S. Price, register. Service of motion acknowledged Jan. 27th, 1899. J. H. Everest, att'y def't.

On Jan. 27th, 1899, motion argued by the plaintiff, defendant, and overruled for the reason that the showing is not sufficient- made by the plaintiff. The plaintiff reserves his exceptions.

ANTON H. CLASSEN, Rec.
SEYMOUR S. PRICE, Reg.

198 In the United States Land Office at Oklahoma City, Oklahoma Territory.

WILLIAM M. ESTES
vs.
RICHARD A. TIMMONS. } Motion for Rehearing.

Based upon the record and the affidavits hereto attached, comes the above named contestant and moves the honorable register and receiver that the decision heretofore rendered by them in the above entitled contest on the 1st day of February, 1899, be set aside and that a rehearing herein be granted, and for grounds of said motion allege that the register and receiver erred as follows:

First. In overruling contestant's motion to file and transmit cross-interrogatories to David Timmons, motion filed Sept. 12th, 1898. (See motion.)

Second. In overruling the motion of contestant to suppress the deposition of David Timmons. (See motion filed Sept. 13th, 1898.)

Third. In overruling the motion of contestant to reopen said hearing before decision rendered. Filed Jan. 27th, 1899. (See motion.)

Fourth. In granting a continuance to defendant to take deposition. (See application filed September 13th, 1898, and Record page 17.)

Fifth. In overruling the plaintiff's motion to suppress the deposition of William L. Hartman, Record page 17.

Sixth. In overruling plaintiff's motion to suppress the deposition of Clarence Hartman, page 18.

Seventh. In overruling the plaintiff's motion to suppress the deposition of Sam Call, Record page 18.

Eighth. In overruling motion to suppress deposition of John Hartman, Record page 18.

Ninth. In overruling motion to suppress the depositions of
199 Dave Timmons, Record pages 19 and 20.

Tenth. In overruling motion to suppress the deposition- of John W. Eaton and H. W. Darrow, Record page- 21 and 22.

Eleventh. In permitting the defendant to testify on the stand as to his inability to procure the personal attendance at hearing of witnesses W. L. Hartman, Clarence Hartman, Sam Call, John Eaton, David S. Timmons, and John Hartman, and W. H. Darrow, Record page- 44 and 45.

Twelfth. In overruling plaintiff's motion for continuance, and thereby not permitting said plaintiff to have an opportunity to fully cross-examine said defendant, page 49.

Thirteenth. In overruling the motion to strike from the record the deposition- of John Eaton and W. H. Darrow, page 57.

To each and all of said rulings plaintiff excepted at the time.

Fourteenth. Said decision is not sustained by the evidence and is contrary thereto.

Fifteenth. Said decision is contrary to the law.

Fifteenth. On the further ground of newly discovered evidence, material to the plaintiff, which said evidence the said plaintiff could not discover and produce *the* reasonable diligence at the hearing hereof.

W. F. HORN &
G. W. ADAMS,
Att'y- for Estes.

200 In the U. S. Land Office at Oklahoma City, Oklahoma Territory.

WILLIAM M. ESTES
vs.
RICHARD A. TIMMONS.

To J. H. Everest, attorney for defendant:

Take notice that the above named plaintiff intends to move the register and receiver to vacate and set aside the decision rendered by them in the above cause, and to grant a new trial of said cause: that a copy of said motion, and the affidavits upon which the same is based, is herewith served upon you; said motion to be heard upon the — day of ——, or so soon thereafter as the said register and receiver may direct.

W. F. HORN AND
G. W. ADAMS,
Attorneys for Estes.

I hereby accept service of the above notice by copy of the same and copy of motion and affidavits therein mentioned, this the 4th day of March, 1899.

J. H. EVEREST,
Attorney for Def't.

Endorsed: Estes *vs.* Timmons. Motion for rehearing. Filed March 4th, 1899, Seymour S. Price, reg.

201 In the U. S. Land Office at Oklahoma City, Oklahoma Territory.

WILLIAM M. ESTES
vs.
RICHARD A. TIMMONS.

I, John Eaton, being duly sworn, depose and say:

That I am 52 years old: that I am the identical person who testified in a deposition before R. E. Wood, a notary public at Shawnee, Oklahoma Territory, on the — day of ——, 1898, as a witness on behalf of the above named Richard A. Timmons. That I signed my name John Eaton instead of John C. Eaton: that said deposition was given at the request of the said Timmons, and under the following circumstances, to wit:

About two months before the aforesaid deposition was given Timmons approached me in the town of Shawnee and told me he had my name down as a witness in his land contest. I told him I could not be a witness in his contest, as I was not here but in Kentucky when the Sac and Fox country opened for settlement. He said that made no difference; no one knew here where I was, and that he could fix it so there would be no trouble about it. He said there would be some boodle in it for me if I would testify for him. I told him I would do no such thing, as I knew nothing about it. (I understood that he was charged with "soonerism.") Some time afterwards, perhaps nearly a month, he again approached me on the same line, only more specific. He then told me that he wanted me to swear just about as it is detailed in the deposition, to wit: That we first met at Little River falls and left there together on the morning of the 19th of April, 1891, in company with Sam Ferguson and W. H. Darrow and went to Choctaw City, to the line, on the
202 afternoon of the 21st day of September, 1891. He then renewed his offer of "boodle" or "sugar," as he would use the terms interchangeably, meaning that he would pay me a money consideration. I again refused as I had done before. It wasn't long until he came to me the third time and said it will now come off (referring to the contest). I passed it by without more than a casual remark and left him. On the day I gave my deposition as aforesaid, I met Timmons in Shawnee when he invited me into a saloon to take a drink, which invitation I accepted. After I had a drink he then said "Let's go up to Bob Wood's office. Darrow is giving his deposition," and I told him I didn't care to go up, that I had no business there. He then invited me to take another drink, which I did. He then insisted that we should go up and see what they were doing. I objected and he insisted. Finally I went up and in a few minutes Timmons invited me down to take another drink. This was repeated five or six times. When I was intoxicated and scarcely knowing anything I yielded to his proposition and gave the said

deposition as aforesaid, and he paid me $10.00 that day, and I now state fully and freely that whatever I have said in said depositions about seeing the said R. A. Timmons or W. H. Darrow at any time prior to the month of September, 1891, is absolutely false, and Timmons knew the same was false at the time he procured me to testify.

I further state that at the time this country (Sac and Fox), was opened for settlement, I was in Whitley county, Kentucky, as sworn to by my former wife, Mrs. Cassie Rogers, née Eaton, which fact is well known to my brothers, J. W. and J. H. Bishop, residing in or near the town of Corbin, Whitley county, Kentucky, also to many others of my relatives and friends.

After making the deposition for the said Timmons and becoming sober thereafter, in reflecting over the matter I concluded that
203 my only way and course to pursue was to come forward and tell the truth; I went to the office of G. W. Adams, in the town of Shawnee, and there made a statement to him as embodied in my affidavit filed herein on motion for new trial, and since I made said affidavit said G. W. Adams has talked to me about it, and about the facts in the case several times and on or about the 6th day of February, 1899, said Timmons came to me in Shawnee and said he wanted me to take back my affidavit that I had given and had filed on behalf of Estes. If I would do so he would protect me; he said if I would take it back and say I was drunk or excited he would stay by me, he would help me out, that we, meaning himself, Darrow, and myself, could have Estes' witnesses indicted for perjury if we would stay together, and then they could not swear against me, and insisted that I should take another drink with him. I told him I would not; that he had already got me into enough trouble; that my brothers in Kentucky and everybody there, besides Cassie, knew I was there at the time I said I was with him, and I proposed to stay by the truth this time, if I had to go to the penitentiary. I had rather do that than live in hiding the balance of my life. He then said if I would not make the affidavit for him he would have to fight me. In one of the conversations he told me to give myself no uneasiness about what I had sworn in the deposition for him, that if any trouble came up with reference to the matter that he would find a John Eaton to fill the bill.

Since I made the affidavit filed in motion to reopen this case I have had several conversations with the witness Darrow, I told him what I had done and advised him to come out and tell the truth. He replied that he would see about it. He also enquired if I was not acquainted in the Creek Nation, and if that wouldn't be a good place to go so as to keep out of the way. I talked fully
204 and freely to Darrow on the matter and at no time did he deny but I was telling the truth in my affidavit. He said that we three, he, Timmons, and myself, could offset Cassie's evidence and they could do nothing with us, and when I told him that my brother's affidavits would be here, he made no reply.

I further state and swear that at the request of G. W. Adams,

attorney for Estes, on or about the 9th day of February, 1899, I joined with him in a letter to J. W. Bishop and my nephew William Knight who resided in Corbin, Kentucky, or near there, enclosing also affidavits for them to execute and return to the said G. W. Adams, stating the time myself and wife arrived home in Kentucky, in September, 1891, on the 3rd inst. I received at the post office at Shawnee, Oklahoma Territory, a letter from my said brother J. W. Bishop, also said affidavits returned without being signed or sworn to, and in his said letter my brother states that he could not be positive whether it was the 15th or 16th of September, 1891, when I arrived home. In said affidavit I had also set out the circumstances of how my name came to be changed from Bishop to Eaton, supposing that he knew all the facts, but said letter informed me that he could not swear positively to those facts as he was my younger brother and only knew what mother and others had told him; that if I would change the affidavits in those particulars and return them to him that he would sign and swear to the same and return to me at once. He also stated in said letter that my nephew William Knight was not present in Corbin just now.

I further state and swear that myself and wife, Cassie Rogers, née Eaton, left Sapulpa the latter part of July or the 1st of August, 1891, and traveled by team and wagon from said point to Corbin, Whitley county, Kentucky; that we arrived at said Corbin on or about
205 the 15th or 16th of September, 1891; that we remained there visiting my relatives until February, 1892, when we returned to Oklahoma Territory.

I further state that I know my brother and said nephew William Knight and many others, will swear to the facts above stated, and give depositions to same as they were well cognizant of our visit to said place and that my said brother J. W. Bishop has so informed me at my request. I am confident that so long as he, or they, didn't know but what said statements might be detrimental to me they would not have given any volunteer evidence whatever, in affidavit or otherwise, but I further state and swear that in case the rehearing is granted I will appear at the said land office, or wherever required, and testify to the above facts.

I make the above statements freely and voluntarily, to correct so so far as I can, the wrong I have done. I do so with the full knowledge of my liability to the law for my former statements in the deposition made on behalf of Timmons, but I further state and swear that at no time since 1890 have I resided at the Sac and Fox agency, Oklahoma Territory, and that the same has not been my post office since said time; that I have resided continually in Shawnee, Oklahoma Territory, for more than two years last past; that said Timmons never asked me to testify in said cause prior to about two months before I gave the said deposition.

J. C. EATON.

Subscribed and sworn to before me this 4th day of March, 1891.

SEYMOUR S. PRICE, Reg.

Endorsed: Estes *vs.* Timmons. Affidavit of John Eaton. Filed March 4, 1899. Seymour S. Price, reg.

206 In the United States Land Office at Oklahoma City, O. T.

WM. M. ESTES
vs.
RICHARD A. TIMMONS.

TERRITORY OF OKLAHOMA, Oklakoma City Office, } *ss:*

I, G. W. Adams, being duly sworn, depose and say:

That I am one of the attorneys for the above named contestant, and as such have had principal charge of said cause since the fore part of July, 1898. That before said hearing was had in consulting with W. J. Estes, the father and agent for contestant, about the testimony herein, I was informed by him that one George Stratton knew and had sworn in an affidavit corroborating the contest of said William Estes, (and upon which affidavit, this hearing is ordered. See letter ordering hearing) that he was with Timmons on the land in controversy in the afternoon of September 22nd, 1891, and that Timmons told him that he, Timmons, was in the Sac and Fox country before the opening of the same, and that he knew where the southeast corner of the land was and ran to it from the south, from the river, and that said Stratton resided at or near Wewoka, in the Seminole Nation, a distance of about forty miles from Shawnee, the place where said W. J. and Wm. M. Estes, resides:

That affiant directed the said W. J. Estes, as agent for the said contestant, to immediately write to said Stratton, request him to appear and testify at the approaching hearing, which was then soon to be had: that said Estes informed this affiant that he did as requested, but heard nothing of said Stratton, and again wrote him, addressing him as before, and heard nothing: that affiant inquired of one J. C. Chowens, who resided at said town of Wewoka,
207 and an acquaintance of affiant's, and was informed by him that he never had heard of said Stratton; that all of the above was done prior to the hearing of said contest, in September, 1898.

That immediately after said hearing said affiant, together with the said W. J. Estes, continued inquiries for said Stratton, which inquiries were made *at* many and divers persons living at Wewoka, and in various parts of the Seminole Nation; that about three weeks since this affiant was informed after inquiries by one Mayyoy, who resides about twenty-five miles north of Wewoka, that he knew said Stratton, and that he resided near said Mayyoy.

Affiant immediately instructed the said W. J. Estes to go to Wewoka by rail and from thence to the residence of the said Stratton but when he arrived at said town, said Estes informs this affiant

that he learned that said Stratton, who lived north from Wewoka was a brother of that George, and that George lived some eighteen miles south of town: that said Estes immediately visited said Stratton and requested him to give his affidavit to the facts as afore set up, to be used in this proceeding for the rehearing herein, that said Stratton declined to do so, at that time; that he said it had been a long time and he would prefer to refresh his memory by seeing a copy of his former affidavit; that immediately this affiant procured from the land office, a copy of the letter ordering this hearing and went to the town of Wewoka the day being very inclement, and called the said Stratton up through the telephone, between the said town of Wewoka and the Indian trading store where Mr. Stratton lives, and then and there read the said affidavit to the said Stratton, to which he replied that it was all true, as he had sworn to it. I then asked him if there was a notary public where he lived and he said there was none. I then requested him to come to the town of Wewoka; that I would pay the expenses and for his time. He said the weather was too cold for him to drive that distance; and
208 if a new trial was had, so that he could go on the witness stand, that he would appear and testify. I sought out a notary public living in the town of Wewoka, by the name of Long, and tried to employ him to go with me to *to* the place of Stratton's residence, and offered to compensate him for the same but he declined on account of the inclemency of the weather, and I here state that said day was intensely cold and that a person in traveling that distance would have suffered greatly; that the said Stratton lives at a trading post within the Seminole Nation, located about sixty miles from the town of Shawnee, and has resided there for two or three years last past; that there is very little travel or communication between said store and any other outside points by the reason of said isolation and distance, was unable to locate the said Stratton at an earlier date than herein above stated. That this affiant, at the time Mrs. Cassie Rogers, née Eaton, testified before the local land office, inquired of her so as to learn of any persons in Oklahoma who knew of the fact that said Eaton was in Kentucky at the time the Sac and Fox country opened for settlement in Oklahoma, September, 1891, and she informed affiant that she knew no one in Oklahoma, but that J. W. Bishop and J. H. Bishop, brothers of said Eaton, and many others who resided at or near the town of Corbin, Kentucky, knew said fact, but that they would not give any information concerning the same, unless they had the consent of their said brother, John, for fear the same might be detrimental to him.

For the purpose of procuring testimony as to the above point, this affiant, after inquiring of many and divers persons, in and about Shawnee, as to such facts, procured from a business directory the name of one A. C. King, an attorney at law, residing in Williamsburg, Whitley county, Kentucky, and on the 10th day of October, 1898, wrote said King for the purpose of employing him to procure the names of persons who knew the said

John Eaton and his said wife, and of their visit to Ken-
209 tucky, on or about the 15th day of September, 1891. On the 22nd day of October, 1898, the said King wrote affiant, which said letter is hereto attached, marked "Exhibit A," and made a part of this affidavit. On the immediate reception of such letter, this affiant sent said King a money order for five dollars, and employed him to look after and procure said affidavit. About the 10th of November, I received a letter from the said King, informing me that he had visited Corbin and had seen the brothers and relatives of the said Eaton, and they refused to give any definite information as to the exact time John and his wife were at Corbin, for fear it might be detrimental to their said brother John. The letter above referred to has been misplaced. I have examined the place where it has usually been kept and have failed to find it.

That since said last named date the said John Eaton has given his affidavits filed in this contest *for* on motion for reopening, in which he admits the falsity of his statements as to his whereabouts or that of the said R. A. Timmons from the 18th, to and inclusive of the 21st of September, 1891, and that he was in the State of Kentucky at said time, and he assures this affiant as the attorney of Estes that his relatives know and will testify that the said John Eaton was in said Corbin, about the 15th or 16th of September, 1891, and remained to about February, 1892.

That on the 9th day of February, 1899, this affiant prepared affidavits for J. W. Bishop and William Knight, brother and nephew respectively to said Eaton, residing in and near the town of Corbin, Kentucky, as above set out, and on the same day registered the same to J. W. Bishop, Corbin, Kentucky, at the post office of Shawnee, and never received any word from said Bishop until the 3rd inst., when the said John Eaton received, at the post office at Shawnee, Oklahoma Territory, said affidavits returned and not signed, together with a letter from J. W. Bishop, his brother, that the said
210 William Knight was temporarily absent from said town of Corbin, and that he, the said J. W. Bishop, could not swear positively that it was on the 15th day of September, 1891, that he and his said wife, Cassie, arrived home in Kentucky, that it was about that time, but that he didn't personally know about the change of name of his said brother from Bishop to Eaton, but had been told by his mother and others; that if said affidavit was changed in those particulars and returned to him that he would sign and swear to such affidavit.

That all of the said evidence is material to the issues in this case. That the same shows a different state of facts from the testimony as given by the said R. A. Timmons, W. H. Darrow and the said J. C. Eaton.

That the aforesaid contestant, this affiant and W. J. Estes, as agent of said contestant, each and all have used the utmost diligence in endeavoring to procure the above testimony, and the same could not have been elicited and procured at an earlier date than now pre-

sented; that this application for rehearing is made in good faith and not for delay, but that justice may be done.

We didn't move for a continuance at the hearing after the testimony of Mrs. Cassie Rogers née Eaton, for the purpose of taking the deposition of parties in Kentucky, as to the presence of the said John Eaton in said State on or about the 15th or 16th of September, 1891, for the reason that Mrs. Cassie Rogers née Eaton informed me that she could not give the names of any persons there who would be likely to know the date other than the brothers and relatives of the said John Eaton, and that they would not testify without the consent of their said brother, therefore I could not give the "names and residences of the witnesses as required by rule 24."

Another reason, I was fearful if I disclosed the fact that I was going to seek evidence in Kentucky that the said John Eaton would flee the country, and as the defendant had sought to confuse
211 and conceal the identity of the said John Eaton, such flight would virtually make such evidence of no utility on behalf of my client.

G. W. ADAMS.

Subscribed and sworn to before me this 4th day of March, 1899.

SEYMOUR S. PRICE, Reg.

Endorsed: Estes *vs.* Timmons. Affidavit of G. W. Adams. Filed March 4th, 1899. Seymour S. Price, reg.

212 "EXHIBIT A."

WILLIAMSBURG, KY., October 22nd, 1898.

G. W. Adams, Esq.

DEAR SIR: I received your communication dated the 10th inst., some days ago. In answer I will say, to get the facts you ask for, I would necessarily have to make a trip to Corbin. My expenses there would be in the neighborhood of $2.50. Should you want an affidavit I would charge you something more, a deposition would cost, to an officer for taking same about $3.00 and I would charge you a reasonable fee for my trouble. My charges in any event will be reasonable. In fact, I am willing for you to fix the fee. You know your client, and know what he is willing and able to pay. Write me what you want and I will look after it for you. I have delayed answering in the hope I would see some one from Corbin from whom I might gather the facts without making a trip, but have been disappointed up to this time.

Let me hear from you.

Yours respectfully, H. C. KING.

213 In the U. S. Land Office at Oklahoma City, Oklahoma Territory.

WILLIAM M. ESTES
vs.
RICHARD A. TIMMONS.

Affidavit in Rebuttal of the Affidavits Used on Motion to Reopen.

TERRITORY OF OKLAHOMA, } *ss:*
County of Oklahoma, }

I, G. W. Adams, being duly sworn depose and say: That I have read the affidavit of R. E. Wood filed on behalf of the defendant in the above motion; that Mr. Wood is mistaken as to the fact that I was in his office at the time the said Eaton testified in his deposition.

The facts are, I stepped into the office before they commenced taking said depositions only for a moment, and called Mr. Wood out in the hall and told him that the land office had refused to permit us to cross-examine Eaton and Darrow orally, and therefore I would not appear in said case. He returned to the office and left the door ajar. I stood in the hall for some ten minutes about ten feet distant from John Eaton, while he was apparently testifying or giving his deposition. I could not hear one word Eaton said.

I have known Eaton some three years personally and intimately; have seen him frequently in a state of intoxication. His appearance as he sat in the chair in Wood's office giving his deposition was identically the same as I had seen him when intoxicated, and quite different from his appearance when sober. I had no conversation with him and could not state positively whethere he was or was not intoxicated, but such was his appearance, and such was my belief at the time I looked at him.

And further affiant sayeth not.

G. W. ADAMS.

214 Subscribed and sworn to before me this 4th day of March, 1899.

SEYMOUR S. PRICE, Reg.

Endorsed: Estes *vs.* Timmons. Affidavit of G. W. Adams, Filed March 4th, 1899. Seymour S. Price, reg.

215 Comes now William M. Estes of lawful age, — being duly sworn, deposes and says:

That he filed a protest and contest in the U. S. land office at Oklahoma City, against R. A. Timmons, involving the south half of the southeast quarter of section 18, township 10 north of range 4 E. I. M. on or about the month of October.

Second. W. F. Harn is my attorney in the above case.

Third. I went to see Timmons and Mr. Helm, attorney, to fix a time for hearing the above case; Mr. Helm said he did not know whether he was Timmons' attorney in the case or not and that he would have to see Timmons before he could do anything in the case.

Fourth. I asked the honorable register, Mr. Dille, when I could have a hearing, I was informed by his lawyer, that he wasn't sure that I had been allowed a hearing on my protest and contest or not. I told him I was informed by my attorney that I have been granted a hearing and wanted him to set a day for trial as I couldn't get Timmons or his attorney to agree on a day for trial.

The honorable register said he would look the case up, and let me know in a few days, and if I had been granted a hearing, could set a date some time in August, 1897.

Fifth. I received no answer from his honor, Mr. Dille, about my case.

Sixth. Afterwards I wrote to the honorable register and receiver for a statement of my case on the 29th of June, 1897, supposing they had forgotten the promise to let me know about it. I received no answer. (See copy of letter, marked Exhibit "H.")

I have not been notified by the honorable register and receiver of the U. S. land office at Oklahoma City, Oklahoma Territory,
216 that my case as above stated has ever been called up or that any action was taken by said office.

WILLIAM M. ESTES.

Endorsed: Subscribed and sworn to before me this 9th day of Nov. 1897. Ed Ward, notary public in and for Pottawatomie county, O. T. Com. ex. Oct. 14–1901.

217 In the U. S. Land Office at Oklahoma City, Oklahoma Territory.

WM. M. ESTES, Contestant,
vs.
RICHARD A. TIMMONS, Contestee.

COUNTY OF POTTAWATOMIE, }
Oklahoma Territory. }

I, John C. Eaton, being first duly sworn, depose and say:

That I am the identical person who testified in the deposition before R. E. Wood, a notary public at Shawnee, Oklahoma Territory, on the — day of —— 1898, as a witness on behalf of the claimant, Richard A. Timmons. That I signed my name John Eaton, instead of John C. Eaton, as I am informed. That said deposition was given at the request of said Timmons and under the following circumstances, to wit:

About two months before the aforesaid deposition was given, Timmons appeared in the town of Shawnee and told me he had my name down as a witness in his land contest. I told him I could be no witness in a land contest, as I was not here but in Kentucky when the Sac and Fox country opened to settlement. He said that made no difference, no one here knew where I was, and that he could fix that so there would be no trouble about it. He said there would be some boodle in it for me if I would testify for him. I told him I could do no such thing, as I knew nothing about it. (I understood that he was charged with "soonerism." Some time afterwards, perhaps nearly one month, he again approached on the same line only more specific. He then told me what he wanted me to swear just about as it is detailed in the deposition, to wit: that we first met at Little River falls, and left there together on the
218 morning of the 19th of April, 1891, in company with Sam Ferguson and W. H. Darrow and went via Choctaw City on towards the line of the Kickapoo and Sac and Fox lands, where I was to leave them near said line in the afternoon of the 21st. He then repeated his offer of "boodle" or "sorgum," as he would use the terms interchangeably. Meaning that he would pay me a money consideration. I again refused as I had done before. It was not until he come to me the third time and said "It will now come off," referring to contest. I passed it by without more than a casual remark and left him.

On the day I gave my deposition as aforesaid, I met Timmons in Shawnee, when he invited me into a saloon to take a drink, which invitation I accepted; after we had a drink he then said "Let's go up to Bob Wood's office, Darrow is giving his deposition." I told him I did not care to go up; that I had no business there. He then invited me to take another drink, which I did. He then insisted that we should go up and see what they were doing; I objected and he insisted; finally I went up and in a few minutes Timmons invited me down to take another drink; this was repeated some five or six times.

After I was intoxicated, scarely knowing or comprehending anything, I yielded to his entreaties and gave the said deposition as aforesaid, and he paid me about ten dollars that day. And I state fully and freely that whatever I have said in said deposition about having seen the said R. A. Timmons or W. H. Darrow at any time during the month of September 1891, is absolutely false and Timmons knew the same was false at the time he procured me to testify to same. I further state that at the time this country, the Sac and Fox, was opened for settlement, I was in Whitley county, Kentucky, as sworn to by my former wife, Mrs. Cassie Rogers, *née* Eaton.
219 Under no circumstances would I have testified as I did had I not been in a state of intoxication, which intoxication was the procurement of the said R. A. Timmons. Timmons paid me about ten dollars on the day I testified. Since said deposition was given and after I became sober, I spoke to Timmons about what a

difficulty he had got me into. That I expected to be arrested at any time. He told me to give myself no uneasiness about it, that he could find a John Eaton and would stand by me and would fight the case for me if I had any trouble about it.

I make this sworn statement freely so as to correct as far as I can, the wrong I have done as aforesaid.

J. C. EATON.

Subscribed and sworn to before me this the 24th day of January, 1899.

[SEAL.] WM. H. DODGE,
Notary Public.

My commission expires April 12th, 1901.

Endorsed: In the U. S. land office at Oklahoma City, O. T. Wm. M. Estes *vs.* Richard A. Timmons. Affidavit of John C. Eaton *as* motion to reopen cause. Filed Jan. 26th, 1899. Seymour S. Price, reg.

220 In the U. S. Land Office at Oklahoma City, O. T.

WM. M. ESTES
vs.
RICHARD A. TIMMONS.

WHITLEY COUNTY,
State of Kentucky, } *ss:*

I, J. W. Bishop, of said county and State, being first duly sworn upon my oath, do depose and say:

I am fifty years of age and have resided in the said Whitley county all my life. That I am acquainted with one John C. Bishop now residing in Shawnee, Oklahoma Territory, and who is commonly called and known by the name of John Eaton. That said party is my older brother and is called Eaton for the reason that our father died when we were quite young and my said brother John, early in life was called Eaton and has been so called and known ever since. That my said brother has for several years, last past, resided in Oklahoma Territory, and for a long time past his post office address has been Shawnee, Pottawatomie county, O. T. That some time in the year 1890 my said brother wrote me, from said Oklahoma, that he had recently married a Sac and Fox Indian woman named Cassie and on the 15th day of September, 1891, my said brother John and his said wife Cassie came to my house near the town of Corbin, Whitley county, Kentucky, and remained in said county visiting relatives until some time in Feb. 1892. When they so came to my house as aforesaid, they were traveling by two horse wagon and team and informed me and others that they had traveled with said wagon and team from their home and had been

on the road about one month traveling from Oklahoma to my house. That I know personally and of my own knowledge
221 that my said brother, John Eaton, was not in Oklahoma Territory at any time from the 18th day of Sept. 1891, to or inclusive of the 22nd day of said month, for the reason herein above stated, and further affiant sayeth not.

J. W. BISHOP.

Subscribed and sworn to before me this 10th day of March, 1899.

——— ———.

STATE OF KENTUCKY, } ss:
Whitley County, }

I, Thos. Adkins, notary public for the county and State aforesaid, certify that the foregoing affidavit was signed and sworn to before me by J. W. Bishop, and I further certify that he is entitled to credit on oath, this 10th day of March, 1899.

THOS. ADKINS,
[SEAL.] Notary Public.

My commission expires March 7, 1900.

I hereby acknowledge service of the within affidavit by copy thereof delivered to me personally this the 17th day of March, 1899.

J. H. EVEREST,
Att'y for Timmons.

Endorsed: In the U. S. land office at Oklahoma City, O. T. Wm. M. Estes *vs.* R. A. Timmons. Affidavit of J. H. Bishop, on motion for new trial. Filed March 17th, 1899. Anton H. Classen, rec.

222 In the U. S. Land Office at Oklahoma City, Okla. Ter.

WM. ESTES }
vs.
RICHARD A. TIMMONS. }

WHITLEY COUNTY, }
State of Kentucky. }

I, Wm. Knight, being first duly sworn, upon my oath depose and say:

I am 34 years old and reside in the above county and State and have so resided during my whole life. That I am well acquainted with one John C. Bishop, who is commonly known and called by the name of John Eaton. That said John Eaton, or John Bishop, is a brother to my mother. That for several years, last past, I received letters from my said uncle from Oklahoma, informing me

that he was residing in said Oklahoma. That in the year 1890, he informed me by letter, that he had married a Sac and Fox Indian woman in O. T. or I. T., by the name of Cassie. That about the 15th day of September, 1891, my said uncle John and his said wife Cassie, arrived at the town of Corbin, in said Whitley county, Ky. That I first met them at said time at the house of my uncle J. H. Bishop, who then resided in the said town of Corbin. That they then and there informed me and others of our family relation that they had traveled by wagon and team from Oklahoma, and had been on the road about one month, and they were so traveling with said wagon and team when they came to the house of my uncle, aforesaid. That they remained in said county, visiting relatives, until some time in the month of Feb. 1892, at which time they started on their return to Oklahoma, since which, I have received occasional letters from my said uncle John, written — mailed
223 at Shawnee, O. T., at which place he informed in said letters he was residing. That I know personally of my own knowledge that my said uncle John was not in O. T. or I. T. from the 18th of Sept. 1891, to and inclusive of the 22nd day of said month, for the reasons herein above stated.

Further affiant sayeth not.

WM. KNIGHT.

Subscribed and sworn to before me this 10th day of March, 1899.

STATE OF KENTUCKY, } *sct:*
Whitley County, }

I, Thos. Adkins, notary public for the county and State aforesaid certify that the foregoing affidavit was subscribed and sworn to before me by the affiant Wm. Knight, and I further certify that he is entitled to credit on oath. This March 10th, 1899.

[SEAL.] THOS. ADKINS,
Notary Public.

My com. expires M'ch 7, 1900.

I hereby acknowledge service of within affidavit by delivering to me personally a copy of the same. This the 17th day of March, 1899.

J. H. EVEREST,
Att'y for Timmons.

Endorsed: 3720½. In the U. S. land office at Oklahoma City, O. T. Wm. M. Estes *vs.* R. A. Timmons. Affidavit of Wm. Knight on motion for new trial. Filed on March 17th, 1899. Anton H. Classen, rec.

224 And be it further remembered, that on the 19th day of November, 1901, the above named defendant filed his de-

murrer to said petition, as amended as aforesaid, which said demurrer, is in words and figures following, to wit:

After the caption and title thereof, demurrer to petition as amended.

Comes now the above named defendant, Richard A. Timmons by his attorney, J. H. Everest, and demurs to the petition of the plaintiff herein, as amended for the reason that said petition wholly fails to state facts sufficient to constitute any cause of action against this defendant.

RICHARD A. TIMMONS, Defendant,
By J. H. EVEREST, His Attorney.

Endorsed: Filed in district court, Pottawatomie county, O. T. November 19th, 1901. B. D. Shear, clerk, by A. N. Stauber, deputy.

225 Be it further remembered, that on the 27th day of November, 1901, said cause came on to be heard before said court, Judge Bayard T. Hainer, presiding; the plaintiff appearing by his attorneys, J. H. Woods and G. W. Adams, and the defendant appearing by his attorney, J. H. Everest, and after hearing the argument of the counsel, said court, thereupon on said day, sustained said demurrer to said petition as so amended, to which ruling and judgment of the court, the said plaintiff then and there duly excepted and excepts; and the said plaintiff then and there elected to stand on said petition as so amended, and for good cause shown, the said court extended the time in which plaintiff might make and serve a case made on the defendant for the period of ninety (90) days, and ordered that said defendant should have twenty (20) days after such service, in which to suggest amendment to such case made; and the said case made to be settled, certified and signed in five (5) days' notice; the said judgment of said court sustaining said demurrer and extending the time to make and serve a case made therein, is in words and figures following, to wit:

226 In the District Court of the Third Judicial District within and for Pottawatomie County, Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff,
vs.
RICHARD A. TIMMONS, Defendant.

Journal Entry.

Be it further remembered that on this 27th day of November, A. D. 1901, the same being one of the regular term days of the October, 1901, term of said court, the above entitled cause came on to be heard, upon the demurrer of the defendant, to the amended petition of the plaintiff; and whereupon the plaintiff appeared by his attor-

neys, J. H. Woods and G. W. Adams, and the defendant appeared by his attorney, J. H. Everest, and said demurrer was submitted to the consideration of the court. and the court having examined the petition, and said demurrer and having heard counsel for both parties, and being otherwise fully advised in the premises, finds that said demurrer is well taken and should be sustained:

And it is therefore considered, ordered, and adjudged by the court, that said demurrer be and is hereby sustained for the reason therein set forth, to wit: that said amended petition does not state facts sufficient to constitute any cause of action against the defendant, and thereupon the plaintiff refused to plead further but elected to stand upon said petition, and thereupon the court dismissed said cause upon the merits, with prejudice, and assessed the costs of this action, taxed at — dollars, against the plaintiff; to all of which judgment and rulings of the court, the plaintiff duly excepted and thereupon the plaintiff asked the court, to give him time to make and serve a case made for the supreme court, and the court gives the plaintiff ninety days to make and serve a case made upon the defend-
227 ant with twenty for plaintiff to suggest amendments, said case to be settled on five days' notice by either party.

BAYARD T. HAINER,
Judge Third Judicial District.

O. K.
G. W. ADAMS,
Attorney for Plaintiff.

Endorsement: No. 1597. Wm. M. Estes *vs.* R. A. Timmons, Journal entry. Filed in district court, Pottawatomie county, O. T. Dec. 5, 1901. B. D. Shear, clerk. By C. A. Stauber, deputy. Filed Feb. 11, 1902. Benj. F. Hegler, clerk supreme court. By Jessie Pardoe, deputy.

228 And be it further remembered that the foregoing contains a true and correct statement of all the pleadings. motions, orders, evidence, findings and proceedings upon which said judgment was rendered.

G. W. ADAMS,
Att'y for Plaintiff.

TERRITORY OF OKLAHOMA, }
Pottawatomie County. }

I, the undersigned attorney, for the defendant in foregoing suit, certify that the foregoing case made was duly served on me this 6th day of February, A. D. 1902.

J. H. EVEREST,
Attorney for Richard A. Timmons, Defendant.

Filed Feb. 11, 1902,

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, Deputy.

To the above named defendant and his attorney, J. H. Everest:

You are hereby notified that on the — day of ——, 1902, the above and foregoing case made will be submitted by said plaintiff to Judge Bayard T. Hainer, who presided at the hearing and rendition of the judgment of said case, at his chambers in the city of Perry, Noble county, Territory of Oklahoma, to be settled, certified and signed by the aforesaid judge.

—— ——,
Attorney for Plaintiff.

Filed Feb. 11, 1902,

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, Deputy.

I, J. H. Everest, attorney for Richard A. Timmons, defendant, hereby accept service of the above and foregoing notice, this 6th day of Feb'y, 1902.

—— ——.

229 It is hereby stipulated and agreed by and between G. W. Adams, attorney for plaintiff, and J. H. Everest, attorney for the defendant in the foregoing case, that the above and foregoing case made shall be submitted to Judge Bayard T. Hainer, who presided at the hearing and the rendition of the judgment in the above case, at his chambers in the city of Perry, Noble county, Territory of Oklahoma, on the 7th day of February, A. D. 1902, to be on that date, then and there settled, certified and signed by said judge.

Dated Feb. 6, 1902.

G. W. ADAMS,
Attorney for Plaintiff.
J. H. EVEREST,
Attorney for Defendant.

Filed Feb. 11, 1902.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, Deputy.

230 TERRITORY OF OKLAHOMA, } ss:
Pottawatomie County, }

This is to certify, that the foregoing above case made and the amendments thereto have been duly served in due time, and the amendments thereto duly suggested, and the same duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same, as above set forth, and as corrected by me, is true and correct and contains a true and correct statement of all the pleadings, motions, orders, evidence, findings, proceedings, and judgments had in such cause; and I hereby settle, allow, cer-

tify, and sign the same as true and correct, and hereby order that the clerk of the district court attest the same with the name and seal of said court, and file the same of record as provided by law.

Witness my hand at Perry, Okla., the 7th day of February, 1902.

[SEAL.] BAYARD T. HAINER,
Trial Judge District Court.

Attest:
B. D. SHEAR,
Clerk District Court,
By C. A. STAUBER, Deputy.

Filed Feb. 11, 1902.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, Deputy.

Endorsed: William M. Estes, pl'ff *vs.* Richard A. Timmons, def't. Case made. Filed in district court Pottawatomie county, O. T. Feb. 10, 1902. B. D. Shear, clerk. By C. A. Stauber, deputy.

231 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error,
vs.
RICHARD A. TIMMONS, Defendant in Error.

Motion to Stay Execution of Judgment.

Comes now the above named plaintiff in error, by his attorney G. W. Adams, and moves the Honorable B. F. Burwell, one of the justices of the supreme court of the Territory of Oklahoma, and moves the said justice, at his chambers in Oklahoma City, to make an order prescribing the terms upon which the execution, operation and effect of the judgment and order of the district court of Pottawatomie county, sustaining the demurrer to the petition, in the case of William M. Estes *vs.* Richard A. Timmons may be stayed, and staying the execution operation and effect of said judgment, dismissing said action, and the judgment for costs therein, and affix the amount of the bond to be given by said plaintiff in error to said defendant in error, staying the execution of said judgment.

G. W. ADAMS,
Attorney for Plaintiff in Error.

Endorsed: 1195—William M. Estes *vs.* Richard A. Timmons—Motion to stay execution of judgment—Filed Feb. 20, 1902—Benj. F. Hegler, clerk supreme court, by Jessie Pardoe, deputy.

232 In the Supreme Court of the Territory of Oklahoma.

WILLIAM M. ESTES, Plaintiff in Error,
vs.
RICHARD A. TIMMONS, Defendant in Error. } Order to Stay Execution of Judgment.

Now, on this 18 day of February, 1902, before me, B. F. Burwell, one of the justices of the supreme court of the Territory of Oklahoma, came on to be heard at my chambers in Oklahoma City, the *application and motion of the above named plaintiff in error, for* an order prescribing the terms on which the operation and effect of the judgment in said cause in the district court of Pottawatomie county, Oklahoma Territory, should be stayed, and the said justice finds from the evidence that a petition in error in the above entitled case has been filed in the supreme court of the Territory of Oklahoma, and that the said plaintiff is entitled to an order staying the execution of said judgment.

It is therefore ordered by me, as one of the justices of the supreme court, that the operation and effect and execution of the judgment of said district court, in said case, sustaining the demurrer to the petition and dismissing said action and for costs of suit, shall be stayed and suspended upon the execution of a bond, by said plaintiff in error, to said defendant in error, in the sum of one thousand ($1000.00) dollars, conditioned that the said plaintiff in error shall pay said defendant in error all loss and damage which said defendant in error shall sustain, by reason of the staying and suspending the operation and execution of said judgment, with good and sufficient sureties to be approved by the clerk of the supreme court of Oklahoma Territory.

B. F. BURWELL,
Justice of Supreme Court.

Attest:
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, Deputy. [SEAL.]

End.: 1195—William M. Estes *vs.* Richard A. Timmons—Order staying execution of judgment—Filed Feb. 20, 1902—Benj. F. Hegler, clerk supreme court. By Jessie Pardoe, deputy.

233 And afterward, to wit, at the June, 1902, term, of said supreme court, on the second day of June, 1902, the following proceeding was had in said cause, to wit:

WILLIAM M. ESTES, Plaintiff in Error,
vs.
RICHARD A. TIMMONS, Defendant in Error. } # 1195.

And now oral argument is waived in this cause and the same is submitted on briefs and record, with ten days to plaintiff in error to file reply briefs.

234 And afterward, at the June, 1903, term, of said supreme court, on the sixth day of June, 1903, the following proceeding was had in said cause, to wit:

WILLIAM M. ESTES, Plaintiff in Error,
vs.
RICHARD A. TIMMONS, Defendant in Error. } # 1195.

And now this cause comes on for final decision and determination by the court upon the record and briefs submitted therein.

And the court having duly examined the same, and being fully advised in the premises, finds: That the judgment of the lower court in this cause should be affirmed, at the cost of plaintiff in error.

It is therefore ordered and adjudged by the court, that the judgment of the lower court in this cause be and the same is hereby affirmed, at the cost of plaintiff in error.

Opinion by Gillette, J. All the justices concurring, except Hainer, J., who tried the cause in the court below, not sitting, and Burford, C. J., concurring in the result, but not in the reasons given nor the law as stated.

Which opinion reads in words and figures as follows, to wit:

235 Filed June 6, 1903.

In the Supreme Court of the Territory of Oklahoma, June Term, 1903.

WILLIAM M. ESTES, Plaintiff in Error,
vs.
RICHARD A. TIMMONS, Defendant in Error. } No. 1195.

Syllabus.

1. Equity—Power to review action of Land Office.—Courts of equity have power to inquire into and correct mistakes, injustice and wrong in both judicial and executive action, founded in fraud, mistake or other special ground of equity, when private rights are invaded, and in the exercise of such jurisdiction may review the determination of the Land Department of the United States. (Following 80 U. S. 72.)

2. Frauds which may be corrected.—As a general rule, the frauds for which a bill in chancery will be sustained to set aside a judgment or decree between the same parties rendered by a court of competent jurisdiction, or special tribunal, are frauds extrinsic or collateral to the matter tried by the first court, and not a fraud which was in issue in the former suit. (Following 98 U. S. 61.)

And when a plaintiff fails to plead such a state of facts as will enable a court of equity to grant relief, a demurrer directed to such pleading should be sustained, for even a petition in equity must not only show that a wrong has been done the party for which he has no adequate remedy at law, but it must appear from the statements in the petition that a court of equity can, if the allegations are established, correct the mistake or fraud.

Error from the District Court of Pottawatomie County—Bayard T. Hainer, Trial Judge—Affirmed.

G. W. Adams, for plaintiff in error.
J. H. Everest, for defendant in error.

Statement of Case.

This is an action in equity to declare a trust, and grows out of proceedings in the United States Land Office between the parties, relative to their respective rights to make homestead entry to the south half of the southeast quarter of section eighteen, township ten north, range four east of the Indian meridian, Pottawatomie county, Oklahoma.

It appears from the record that plaintiff in error, Estes, made settlement upon the southeast quarter of section eighteen aforesaid on September 22, 1891, and on September 25, 1891, made his homestead entry thereof in the United States land office at Oklahoma city. Thereafter the defendant in error, Timmons, filed his contest affidavit against the entry of plaintiff, alleging priority of settlement thereon. In due course of time this contest came on for trial before the land office officials, resulting in the finding and decision by the register and receiver that the defendant, Timmons, was entitled to enter the land by virtue of his priority of settlement, which decision of the land office was made and entered on the 21st day of May, 1894.

Thereafter on the 26th day of September, 1894, plaintiff in error, Estes, filed in said land office his affidavit of contest against said Timmons's homestead entry, alleging in substance that said Timmons was not qualified to make homestead entry of said premises for the reason that he had entered upon said lands and other parts of the territory opened to settlement, prior to 12 o'clock noon of the 22nd day of September, 1891, and subsequent to September 18

1891, in violation of the laws and proclamation of the President opening said lands to settlement.

It will thus be seen that the issue to be tried in this last contest was whether Timmons, the defendant in error, had wrongfully entered upon said lands during the prohibited period, and was therefore perpetrating a fraud upon the Government in attempting to hold the same. This second contest between these parties also came on for a hearing before the land office, and a large number of witnesses were examined therein. The result of this contest was a finding and decision by the register and receiver that said de-
236 fendant, Timmons, did not so enter upon and occupy said lands and was therefore qualified to make settlement and homestead entry of said tract. Both of these contests were carried to the Commissioner of the General Land Office and from him to the Secretary of the Interior, and the findings and decision of the register and receiver were by each of these officers affirmed.

Thereafter the plaintiff, Estes, filed his petition in this cause, setting out all the evidence taken before the register and receiver in the last contest, wherein the right and qualification of defendant, Timmons, to make homestead entry of said lands, was the issue, and alleging that Timmons obtained the finding and decision of the land department by means of the false, fraudulent and perjured testimony so given and accepted by the said register and receiver.

To this petition defendant, Timmons, filed a general demurrer, which having been presented and argued in the court below was by that court sustained. From the order and judgment sustaining said demurrer plaintiff prosecutes this appeal.

Opinion of the court by GILLETTE, J.:

The right of plaintiff to maintain this action is based wholly upon the alleged fraud of defendant, Timmons, in the proofs by him submitted to the register and receiver of the land office, and the only question for consideration on this appeal is whether the court below erred in sustaining a demurrer to the complaint upon the ground that it did not contain facts sufficient to constitute a cause of action.

There can be no question about the power of courts of equity in this class of cases to inquire into and correct mistakes, injustice and wrong, in both judicial and executive action, founded in fraud, mistake or other special ground of equity, when private rights are invaded.—Johnson *v.* Townsley, 80 U. S., 72.

In Plummer *v.* Brown, 12 Pac., 464, the supreme court of California, in a case very similar to the one at bar, speaking of the decision of the officials of the land department, say:

"But, while the judgment is conclusive at law, there is no doubt of the equitable doctrine that if the successful contestant has acquired, pursuant to the judgment, the legal title, affected with any fraud or trust in relation to it, he will be regarded in equity as a

trustee of the true owner, and the owner may, by a proper proceeding in equity, compel a conveyance to himself of the legal title.

"To entitle the alleged owner, however, to such equitable relief, he must show that he occupies such a status as entitled him to control the legal title; that the officers who awarded the land to another, to whom the title was issued * * * were imposed upon and deceived by the fraudulent practices of him in whose favor the judgment was given, and that they were thereby induced to give judgment in his favor. These things must be distinctly alleged and clearly proven."

The above case of Plummer *v.* Brown is the first authority cited in plaintiff's brief, and we therefore assume that the rule therein laid down is satisfactory to him. In any event it is undoubtedly the law.

Turning now to the plaintiff's petition, the only allegations of fraud or deceit we are able to find is contained in the 6th and 7th paragraphs, which read:

"Sixth. Plaintiff further alleges that said contest so commenced and instituted was duly heard and tried by the register and receiver of said land office at Oklahoma City upon testimony and depositions introduced therein, and that upon hearing and trial said defendant wilfully, intentionally and fraudulently, intending to deceive and mislead and misinform said register and receiver, procured and introduced the testimony of the following named witnesses: W. L. Hartman, Clarence Hartman, Sam Call, David L. Timmons, John Eaton and H. W. Darrow, who, at the instigation and procurement of the said defendant, testified before said register and receiver, in substance and effect that the said defendant did not enter upon or occupy any of said lands so opened to settlement as aforesaid before 12 o'clock, noon, of September 22nd, A. D., 1891, and subsequent to September 18th, A. D. 1891, and to the effect that they were with said defendant during said period and all of the same; which said testimony was false, and known by said defendant to be false when he procured and introduced the same; that by reason of, and by said false testimony of said witnesses and of defendant, the honorable register and receiver of said land office was misled and deceived, and induced thereby to believe that said defendant did not enter upon and occupy any of said lands so opened to settlement prior to twelve o'clock, noon, of September 18th, A. D. 1891, and being so induced to believe, and believing the same, the said register and receiver made their decision and findings in said hearing and trial, that said defendant did not so enter upon and occupy said lands, and was, therefore, qualified to make settlement and homestead entry of said tract of land; that if said false testimony had not been procured and introduced as aforesaid, the said register and receiver would have made their findings that said defendant was disqualified to make said entry, by reason of having entered upon and occupied said lands as aforesaid.

"Seventh. Plaintiff further alleges that he could not at the time

and had no means in his power to rebut successfully or disprove said false testimony."

237 These are all the allegations of fraud we are able to find in plaintiff's petition, and these allegations do not embrace all of the elements of frauds for which equity will intervene to set aside the judgment of a court or judicial tribune. Fraud is always a question of *fact*, and must be specifically pleaded and convincingly proved.

"The frauds for which a bill to set aside a judgment or a decree between the same parties, rendered by a court of competent jurisdiction, will be sustained, and those which are extrinsic or collateral to the matter tried, and *not a fraud which was in issue in the former suit*."—U. S. *vs.* Throckmorton, 98 U. S., 61.

"The cases where such relief has been granted are those in which, by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject of said suit."—*Ibid.*

The only allegation of fraud in this petition, *in* the statement that the witnesses named, testifying on behalf of defendant, Timmons, testified falsely—in short, committed perjury—and the further allegation that the plaintiff was then unable to disprove their statement. Whether he would now be able to refute the same does not appear; nor does it appear that there was not sufficient truthful evidence to sustain the decision of the land department.

In the various contests before the land department of the Government these parties seem to have been given a fair and full hearing as to their relative rights to make homestead entry of the premises in question. It is not claimed that any mistake was made by these officers in the interpretation or application of the law to the facts proved or attempted to be proved before them. The only wrong complained of is the fact that the register and receiver, and after them the commissioner and the Secretary of the Interior, chose to believe the seven witnesses testifying on the part and in behalf of defendant, Timmons, rather than the three testifying for plaintiff, Estes. Undoubtedly there is an irreconcilable difference; in short, a flat contradiction between the testimony of the witnesses upon the one side and the other. If this were sufficient reason for invoking the extraordinary powers of a court of equity, there could scarcely be a judicial investigation before any tribunal which might not be vacated, and a retrial of the facts in controversy permitted and ordered on the ground that the verdict arrived at in the former court had been obtained by the fraud and deception of the successful party. Such is not the law.

Our attention has been called to the cases of Garland *v.* Wynn, 61 U. S., 6, and Lytle *vs.* State of Arkansas, 63 U. S., 193.

Both of these cases were to a great extent *ex parte*, and therefore no *trial* of the question of fact was had in the land office, but the question of fraud was one upon which no hearing or trial had been

had before the officers of the land office, and in which persons not parties to any contest in the land office were chiefly concerned.

In Baldwin *v.* Stark, 107 U. S., 463, the law in this class of cases is very clearly stated, as follows:

"It has been so repeatedly decided in this court, in cases of this character, that the land department is a tribunal appointed by Congress to decide questions like this, and when finally decided by the officers of that department the decision is conclusive everywhere else, as regards *all questions* of *fact*, that it is useless to consider the point further. Where fraud or imposition has been practiced on the party interested, or on the officers of the law, or where these latter have clearly mistaken the law of the case as applicable to the facts, courts of equity may give relief; but they are *not authorized to re-examine into a mere question of fact* dependent on conflicting evidence, and to review the weight which those officers attached to such evidence."

Of like import will be found the decisions of—Johnson *v.* Towsley, 13 Wall., 72; Shepley *v.* Cowan, 91 U. S., 330; Marquez *v.* Frisbie, 101 U. S., 473; Quinby *v.* Conlan, 104 U. S., 420; Lee *v.* Johnson, 116 U. S. 48.

In short, rulings upon matters of fact, or upon mixed questions of law and fact, which were properly before or cognizable by the land department, and passed upon by it, are no longer open for question or argument. Here no "fraud or imposition has been practiced upon the party interested," nor yet upon the officers of the law, save as it is to be inferred from the allegation that part of the witnesses on the part of the defendant, Timmons, testified falsely. Courts cannot exercise an appellate jurisdiction over these officers or re-try questions of fact of this character which have been fully and fairly heard before that tribunal. The mere fact that perjury may have been committed by witnesses testifying before the officers of the land department, will not authorize a court of equity to intervene, where a full and fair hearing has been had, and the officers, like a jury, have simply belived the witnesses upon one side and disbelieved those upon the other.

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Without pursuing the investigation further it is sufficient to repeat that the frauds for which a bill in chancery will be sustained, to set aside a judgment or decree between the same parties, rendered by a court of competent jurisdiction, are frauds extrinsic or collateral to the matter tried by the first court, and not a fraud which was an issue in that suit.

The judgment of the court below is affirmed; all the justices concurring except Hainer, J., who tried the case in the court below, not sitting. Burford, C. J., concurring in the result, but not in the reasons given, nor the law as stated.

239 UNITED STATES OF AMERICA, Territory of Oklahoma, } ss:

In the Supreme Court.

I, Benj. F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the foregoing 238 pages, numbered from 1 to 238 inclusive, are a full, true and complete transcript of the record and all proceedings in said supreme court in the case of William M. Estes, plaintiff in error, *vs.* Richard A. Timmons, defendant in error, as the same remain upon the files and records of said supreme court.

In testimony whereof, I hereinto subscribe my name and affix the seal of said supreme court, at the city of Guthrie, this 15 day of July, A. D., 1904.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk Supreme Court, Oklahoma Territory.

Endorsed on cover: File No. 19,435. Oklahoma Territory supreme court. Term No. 74. William M. Estes, appellant, *vs.* Richard A. Timmons. Filed August 8th, 1904. File No. 19,435.

[redacted]

[redacted]

WM. M. ESTES, *Appellant*,

vs.

RICHARD A. SIMMONS, *Appellee*.

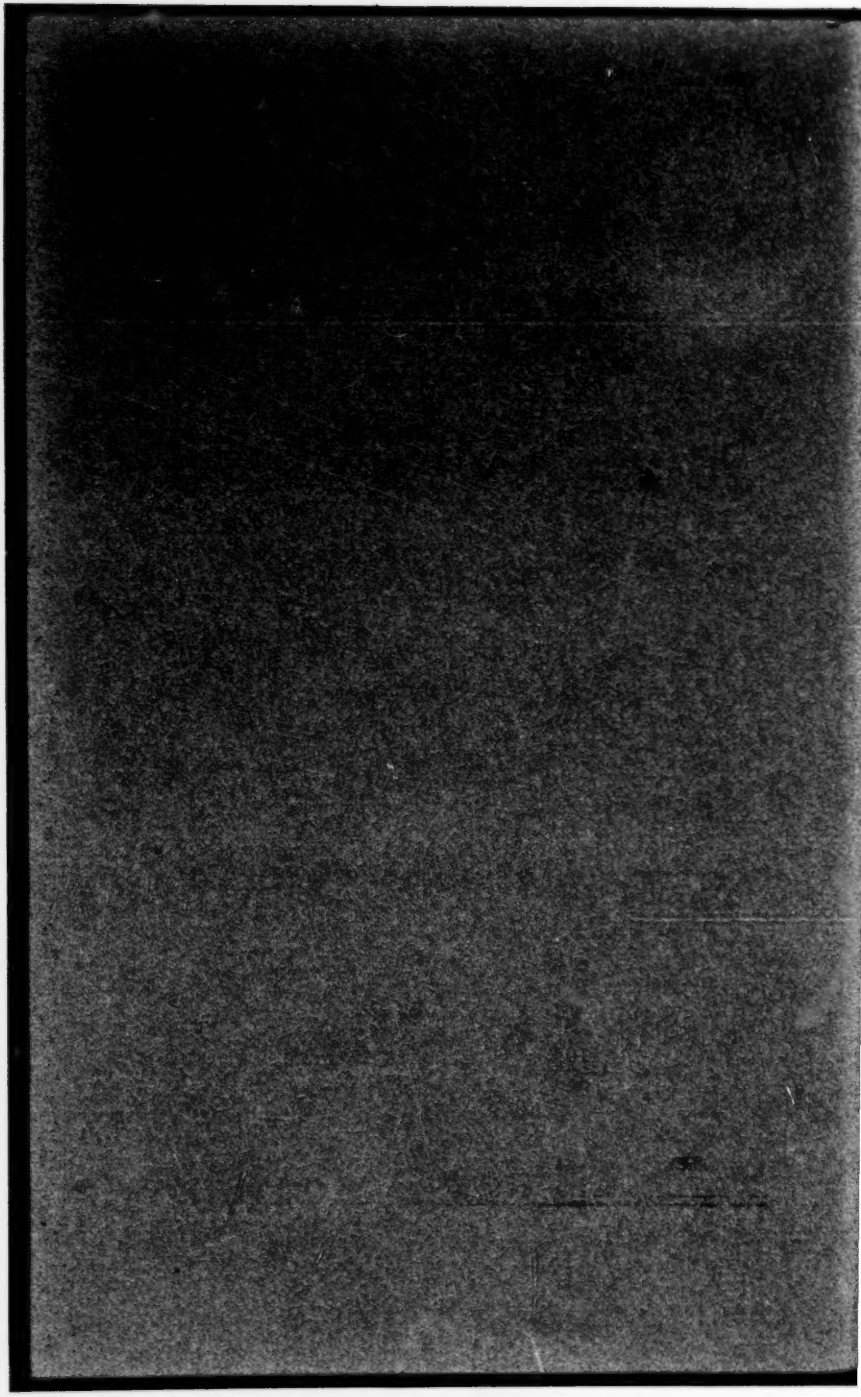
[redacted]

[redacted]

[redacted]

S. B. LUCKETT,
Attorney for Appellant.

[redacted]



IN THE

Supreme Court of the United States.

WM. M. ESTES,
Appellant,
vs.
RICHARD A. TIMMONS,
Appellee.
No. 74.

BRIEF AND ARGUMENT FOR APPELLANT.

Statement of Case.

This case comes up on appeal from the decision of the Supreme Court of Oklahoma, rendered June 6, 1903 (Record, 139).

The proceedings in the case are stated with substantial accuracy in the opinion of the Court below, beginning at page 140 of the Record. Estes, plaintiff below, filed his petition in Equity in the District Court of Pottawotomie Co., Oklahoma, seeking to declare a trust as against Timmons, defendant below, as to the S. ½ of the S. E. ¼ of Sec. 18, T. 10 N., R. 4 E., in said county.

In his petition (Record, p. 8), Estes declares that said land was a part of the Sac and Fox reservation in the Territory of Oklahoma, which was thrown open to settlement and entry on Sept. 22, 1891, under the proclamation of the

President of the United States, issued Sept. 18, 1891 (27 Stats., 989). It is further shown that plaintiff, being qualified, settled on said land within a few minutes after the hour of opening. On Sept. 25, 1891, he made homestead entry thereof. Thereupon, the defendant and appellee, Timmons, contested this entry in the local land office, alleging that he, Timmons, had settled on said tract prior to the settlement of Estes, and on a hearing had, it was held by the Register and Receiver of the local land office at Oklahoma City, Oklahoma, that said Timmons was, in fact, the prior settler, and, as a result, appellant's entry was cancelled, and appellee was allowed to enter the land; that pending this first contest, this appellant filed his contest affidavit against appellee, alleging that said appellee was not qualified to make a homestead entry on said lands for the reason that he had entered upon and occupied this identical land and other parts of the reservation then opened to settlement prior to noon of Sept. 22, 1891, and after Sept. 18, 1891; that said contest resulted in a decision by the local officers in favor of the said Timmons, it being alleged in the sixth paragraph of the petition "that upon said hearing and trial said defendant wilfully, intentionally and fraudulently, intending to deceive and mislead and misinform said register and receiver, procured and introduced the testimony of witnesses, W. L. Hartman, Clarence Hartman, Sam Cole, David L. Timmons, John Eaton and H. W. Darrow, who at the instigation and procurement of the said defendant testified before said register and receiver, in substance and effect, that the said defendant did not enter upon or occupy any of said lands so opened to settlement as aforesaid before 12 o'clock noon of Sept. 22nd, A. D. 1891, and subsequent to Sept. 18th, A. D. 1891, and to the effect that they were with said defendant during said period and all of the same; which said testimony was false, and known by said

defendant to be false when he procured and introduced the same."

It is further alleged that by reason of said fraudulent action and imposition on the part of the said Timmons, the Commissioner of the General Land Office and the Secretary of the Interior were induced to and did hold that the said Timmons was duly qualified to make entry of said land, and by reason thereof said contest was finally decided against this appellant. A certified copy of all the testimony submitted in the case on both sides is made a part of the petition, together with the proceedings had at the local office.

Later, appellant, by leave of the District Court, was allowed to amend the seventh paragraph of his petition, the amendment beginning at page 115 of the Record. Therein it is alleged that after the testimony was taken in the contest, and before any decision had been rendered by the Register and Receiver, appellant filed with said local officers his motion to reopen the hearing in said contest for the purpose of introducing further testimony, which motion was supported by affidavits attached thereto; that the local officers overruled said motion, and rendered their decision, as stated, against appellant, and in favor of appellee, and that thereupon appellant filed his motion for a new trial in said case, supported by affidavits (to be referred to hereafter), showing the absolute falsity of certain evidence introduced by the defendant, Timmons. This motion was also overruled by the local officers, and upon successive appeals to the Commissioner of the General Land Office and the Secretary of the Interior this action of the local officers on said motion was sustained.

In the opinion of the Court below, beginning at page 142 of the Record, the sixth and seventh paragraphs of the original bill are quoted at length, with no reference whatever to said amendment, indicating, it would seem, that the Court

overlooked the force and effect of the amendment to the original petition.

A demurrer was filed to the amended bill which was sustained by the District Court, and upon plaintiff's refusal to further amend, judgment was rendered against him by the Court (Record, p. 131).

From this judgment appeal was taken to the Supreme Court of the Territory in due form, resulting, as stated, in the decision set forth in the Record, beginning at page 139.

The Questions Presented by the Record.

In accordance with the provisions made in the Act of Congress, approved March 3, 1891 (26 Stats., 989, Sec. 16), the President, on September 18, 1891, issued his proclamation opening the Sac and Fox Reservation. In this proclamation was inserted the following paragraph (27 Stats., 992):

> "Notice, moreover, is hereby given that it is by law enacted that until said lands are opened to settlement by proclamation, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands, or acquire any right thereto. The officers of the United States will be required to enforce this provision."

The effect of the construction given to this provision of the proclamation by the Land Department is to hold that the issuance of the proclamation closed the lands to which it applies until noon of September 22, 1891, making presence within the limits of those lands a disqualification in accordance with the general provisions of the Act of March 2, 1889 (25 Stats., 1004).

From a reading of the opinion of the Territorial Supreme Court it would seem that it was thought by the Court that

appellant's petition failed to set forth fully the facts on which he based his allegation that the decision of the Land Department, in favor of Timmons, had been procured by fraud and by false testimony. It is said (Record, p. 143):

> "The only allegation of fraud in this petition is the statement that the witnesses named, testifying on behalf of defendant, Timmons, testified falsely—in short, committed perjury—and the further allegation that the plaintiff was then unable to disprove their statement. Whether he would now be able to refute the same does not appear; nor does it appear that there was not sufficient truthful evidence to sustain the decision of the Land Department."

And again, on the same page:

> "The only wrong complained of is the fact that the Register and Receiver, and after them the Commissioner and the Secretary of the Interior, chose to believe the seven witnesses testifying on the part and in behalf of defendant, Timmons, rather than the three testifying for plaintiff, Estes."

We submit, with the utmost respect for the ability of the Court below, that by the failure to consider the amendment to the original petition of the appellant, the Court failed to appreciate the real nature of appellant's cause of action. This is not a case involving the question of the credibility of the witnesses whose testimony is set out in the record, nor the weight of the evidence introduced by the respective parties. If it were that kind of a case, it would not be here.

The record shows that at the hearing in the contest, Estes introduced witnesses who testified positively to facts which show that Timmons was inside of the Sac and Fox Reservation at least three days prior to September 22, 1891, and that just prior to that time he had been on this identical tract of

land. (See testimony of Adair, p. 52, and J. W. Boling, p. 62.)

A number of witnesses, including Timmons himself, testified in his behalf. Among these witnesses was one, John Eaton, whose testimony was taken by deposition (Record, p. 38). This witness testified (39) that he had traveled with Timmons from September 19, 1891, from a point in old Oklahoma, in a wagon, to a point within three-quarters of a mile west of the west line of the Sac and Fox country, where he left Timmons about 4 p. m., September 21. One of the affidavits upon which appellant's motion for new trial was based was an affidavit by this same Eaton, set forth in the Record, beginning page 121, in which he swears in great detail to the effect that he was not even in Oklahoma at all at the time of the Sac and Fox opening, but had reached his old home in Kentucky just before the opening, having gone there in a wagon and having spent over a month on the way. This affidavit of retraction made by Eaton is supported by affidavits which were also filed with the motion for new trial, executed in Kentucky by his brother, J. W. Bishop (Record, p. 131) and his nephew, Wm. Knight (Record, 132), and the testimony of Mrs. Cassie Rogers (Record, p. 106), formerly the wife of John Eaton, from which affidavits and testimony it appears conclusively that Eaton's affidavit of retraction was true and that he was not in Oklahoma at the time of the Sac and Fox opening, and that he was not with Timmons at 4 o'clock on the day before the opening, outside of the line, and that therefore, his testimony given at th hearing was absolutely false.

The importance of the above facts will be at once observed when the testimony of the appellee, Timmons, at the hearing, is read, beginning at page 79, of the Record. He testified to his alleged movements during the four or five days preceding September 22, 1891, the date of the Sac and

Fox opening. On page 81, of the Record, he testified as follows:

> "Q. Do you know one Johon Eaton?
> A. I am slightly acquainted with him.
> Q. Did you see him at any time before the opening of the Sac and Fox country? If so, when was the last time you saw him before the opening?
> A. The last time I saw him was about 4 o'clock in the afternoon, September 21."

On cross-examination (pp. 84, 85), he testified:

> "Q. When you arrived at Choctaw City, what did your party consist of, horses, wagons and persons?
> A. Consisted of one lumber wagon, four horses, Samuel Ferguson, John Eaton, H. W. Darrow and myself."

Again, on page 86:

> "Q. Who was with you at this point a mile northwest of Choctaw City, on the evening of the 19th and the morning of the 20th?
> A. H. W. Darrow, Sam Ferguson, John Eaton and myself."

On page 87 he testified that his party, after crossing the North Canadian River, traveled southeasterly through the Kickapoo country to a point within three-quarters of a mile from the Sac and Fox line where, he says, they camped on September 21, 1891. On page 88 he testified:

> "Q. Did you meet anybody on your trip from Little River Falls up to the point three-quarters of a mile from the Kickapoo line that you were acquainted with at that time, or became acquainted with at any time?
> A. At Little River Falls Mr. Ferguson came into camp. I knew him in Iowa. Mr. John Eaton and he were together, and I got slightly acquainted with Mr. Eaton."

It will be seen that Timmons committed himself irrevocably to the fact that John Eaton was a member of his party from the evening of September 19, until the afternoon of September 21, and that he then left the party. If Eaton was not in Oklahoma Territory at that time, these statements of Timmons were false and were introduced by him into his testimony in order to pave the way for the false testimony of Eaton.

The case for Timmons in this contest was not as strong as the Court below seemed to think. The seven witnesses referred to in the opinion of the Court with the page of the Record at which their testimony begins, are presumably the following: W. L. Hartman (12), Clarence Hartman (18), Sam Call (24), John F. Hartman (27), H. W. Darrow (32), John Eaton (38), David S. Timmons (44). The three Hartmans claimed to have met Timmons on the line of the Sac and Fox land about 8 a. m., September 22, 1891, and to have been with him up to the hour of opening. Each one admitted that he did not know anything as to the whereabouts of Timmons prior to the morning of September 22.

Sam Call testified that he traveled with Timmons from Norman to the line, having left Norman on the evening of September 20, and arrived at the stopping place on the evening of September 21, 1891, while Timmons himself swears that they came to Norman on September 18, left there that day, and by the morning of September 20, they were three miles northwest of Choctaw, and nowhere mentioned Call as in his party (Record, p. 80).

H. W. Darrow testified (Record, p. 33), that he left Norman on the afternoon of September 18, in company with Timmons, and other parties, describing their movements about as Timmons, and then said:

> "We moved our camp the morning of the 22nd, up on to the line; we remained there until 12 o'clock noon,

> central standard time, and we made the run at 12 o'clock sharp. I remember that there was Sam Ferguson, *John Eaton*, Richard A. Timmons and myself, from Little River Falls to our camp near the Sac and Fox line, then were joined by John Hartman at 8 o'clock in the morning of the 22nd, Clarence Hartman, Sam Call, and Ed. Spencer, John W. Boling, Ote Adair and D. S. Timmons, there were all present that I knew."

And yet Timmons himself, as we have shown, testified that Eaton left his company on the afternoon of September 21, and he knew nothing about him after that (Record, p. 89). Call swears he was with the Timmons party from Norman and Eaton showed he was not in the Territory at all.

D. S. Timmons, a son of the appellee, testified to his father having started from Norman for the Sac and Fox line, but that he, the witness, was not with him during the entire journey, but says he went into his father's camp on the evening of September 21, and was with him until the hour of opening.

It will be seen that the point sought to be established by this testimony was that on the morning of the day of opening, Timmons was at the line. The "seven witnesses" do not account for his whereabouts between September 18 and September 22, except as to the witnesses Darrow and Eaton. The latter's testimony was retracted, and the former's is false, if Eaton was not in the Territory. Ferguson was not called as a witness nor his whereabouts accounted for.

The decision of the local officers on this kind of a case is set out in the Record at page 112. They found, among other things, as follows (Record, p. 113):

> "The plaintiff introduced several witnesses to show the disqualification of the defendant, but they all failed to positively testify that they saw the defendant within said country during the said prohibited period."

It was because of the above conclusion as to the evidence of contestant, apparently, that the local officers held that the showing for new trial was insufficient. And yet at least two witnesses, Adair and J. W. Boling, mentioned above, had testified positively that the appellee, Timmons, was within the lands to be opened, on September 19, 20 and 21, in a camp a short distance southeast of the identical tract involved in this case. (See testimony of Adair, Record, p. 53, 54, and on cross-examination, bottom of p. 58; testimony of J. W. Boling, Record, p. 62, 63, 64.)

The record made at the hearing of the contest of Estes *vs.* Timmons, having been incorporated by reference into the petition of Estes, in the District Court, everything that is shown in the Record must be taken into consideration in determining the correctness of the decision appealed from. This Record shows that after the hearing was closed at the local office and before any decision was rendered by the Register and Receiver, the contestant, Estes, laid before those officers, very promptly, the facts disclosed in the affidavit of John C. Eaton (Record, p. 46). Eaton's testimony (Record, p. 38), was taken September 26, 1898, by deposition before a Notary Public. On January 24, 1899, he made the above affidavit in which he states what he says were the efforts made by Timmons to induce him, Eaton, to testify in behalf of Timmons, saying that Timmons suggested the story he was to tell about the same as he had told it in his deposition. This affidavit was filed in the local office on January 26, 1899 (Record, p. 48), and on January 28, 1899, Estes filed his application to reopen the case, accompanied by the affidavit of G. W. Adams, his attorney before the local office (Record, p. 116). In this affidavit Mr. Adams says:

> "That if the said cause is reopened, contestant will be able to prove by the said John Eaton, J. W. Bishop and J. H. Bishop, that the said John Eaton was not in

the Territory of Oklahoma, but in the State of Kentucky on the 21st day of September, 1891. And that said contestant will be able to prove by John F. Hartman, W. L. Hartman and Clarence A. Hartman, as this affiant is informed and believes that the said Sam Call, who swore on behalf of Timmons, that he was with Timmons until about 8 o'clock on the 22nd day of September, 1891."

As already stated, the local officers declined to reopen the case, and on February 1, 1899, rendered their decision (Record, p. 112).

Thereafter, on March 4, 1899, Estes, by his said attorney, filed his motion for new trial, as stated (Record, p. 119). This motion was supported by an affidavit made by Eaton (Record, p. 121), in which he states the facts much more fully than in his first affidavit, but to the same effect, namely, that in the latter part of July, or the first of August, 1891, he and his then wife, Cassie, started in a wagon from Sapulpa, Oklahoma, to Whitley County, Ky., where they arrived about September 15 or 16, 1891, on a visit to his relatives, and remained until February, 1892, when they returned to Oklahoma. The affidavits of J. W. Bishop (Record, p. 131), and Wm. Knight (Record, p. 132), as already stated, fully corroborate Eaton's affidavit. This motion for new trial or rehearing was overruled.

Taking the entire petition as amended, looking to the facts incorporated into it in the record of the contest, we submit that it makes a case very strong on the face of the pleading on the following propositions:

1. It shows that Timmons obtained the decision of the local officers and the affirmance thereof, not only by false and perjured testimony of his witnesses, but that he, himself, necessarily committed perjury in his own testimony.

2. That upon the case made, it is shown that it was the

duty of the officials of the Land Department to further investigate the charges made against Timmons by Estes in the interest of the United States as well as of Estes himelf.

Questions of Law Presented.

I.

For the appellant it is frankly conceded that the several tribunals of the Land Department are made special tribunals vested with quasi-judicial authority to determine facts as between conflicting claimants to the same tract of public land and that the findings of facts upon contradictory testimony, by these tribunals, are conclusive not only in the Land Department, but also upon the Courts. If the case at bar were the kind of case that the Oklahoma Supreme Court seemed to consider it, simply a case of the weight of evidence, there could be no possible doubt but that the decision below should be affirmed. But the case made by appellant's petition in the District Court is not that kind of a case.

II.

This is not a case involving simply conflicting claims to the same tract of land. The charges made in the contest of Estes *vs.* Timmons, are, primarily, charges in which the United States is interested, being a charge of disqualification against Timmons. Of course, if Estes could sustain this charge he would expect to profit by the same, not as a successful contestant under Section 3, of the Act of May 21, 1880, but as an actual settler residing on the land who would have the right of entry, as a settler, for three months, under Section 2265, U. S. R. S., if Timmons' claim should be rejected by the Land Department.

We say the Government was primarily interested in this contest. Such we understand to be the force of the rule laid

down by this Court in the case of Knight *vs.* United Land Association, 142 U. S., 161, in which the Court, speaking through Mr. Justice Lamar, said, in reference to the duties of the Secretary of the Interior as the head of the Land Department:

> "The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it. He represents the Government, which is a party in interest in every case involving the surveying and disposal of the public lands."

The United States is so far interested in keeping the title to a tract of public land within the jurisdiction of the Land Department until the question as to who is entitled to a patent has been properly determined that suit will be brought in the name of the United States to vacate a patent improvidently issued before the Department has fully determined this question (Germania Iron Co. *vs.* United States, 165 U. S., 379; Williams *vs.* United States, 138 U. S., 514).

And cases of this kind have even gone to the extent of recognizing the right of a party whose claim to a tract of public land had not been fully determined by the Land Department, to go into the Courts himself to maintain his claim as against the party to whom patent had issued (Duluth & Iron Range R. R. Co. *vs.* Roy, 173 U. S., 587).

It is true that in each of the three cases cited above, patent was inadvertently issued by officials in the General Land Office while contests were pending in the Department to determine the relative rights of conflicting claimants to the land. It was held by this Court in the first two cases, that the United States had sufficient interest in the proper disposal of the title to maintain suit to vacate a patent so issued. In the

third case, that of R. R. Co. *vs.* Roy, *supra,* this Court went further and held that the Courts might inquire directly into the question as to which of the two conflicting claimants was entitled to the land. In that case, the patent was not vacated in order that the jurisdiction of the Land Department might be restored and the contest proceedings continued to the end, but the decision of the District Court of Minnesota quieting title to the land in Roy as against the patent issued to the State of Minnesota, pending Roy's contest, was affirmed by the State Supreme Court and on the case being brought by writ of error to this Court, the judgment of the State Supreme Court was affirmed.

While the exact conditions which obtained in those cases do not appear in the case at bar, so far as the issuance of patent before the contest was finally adjudicated by the Land Department, still we apprehend that the principle sustained by those decisions applies here with great force. Estes showed beyond any controversy that the judgment in favor of Timmons was procured not only by false testimony on the part of witnesses who were examined for Timmons, but that Timmons himself committed direct perjury in his own testimony. Notwithstanding this, the several tribunals of the Land Department refused to give Estes any opportunity to establish these facts by reopening the contest for that purpose and the correctness of this action is a matter which the Courts have the power and the right to review.

III.

In a case like this the Courts will look into the record of the proceedings had in the Land Department, not for the purpose of ascertaining whether that Department came to a correct conclusion of fact from conflicting evidence, but to determine whether or not the judgment of the Department was right and just as between the parties and not the result

of: 1. Error of law committed by the Department officials; 2. Fraud committed by the prevailing party; 3. Or imposition upon the Department officials by the prevailing party without which the decision would have been the other way.

One of the leading decisions of this Court on this proposition will be found in the case of Garland *vs.* Wynn, 20 Howard, 5, in which the Court said (quoting syllabus):

> "Courts of justice have power to examine a contested claim to a right of entry under the pre-emption laws, and to overrule the decision of the Register and Receiver, confirmed by the Commissioner, in a case where they have been imposed upon."

In the following cases, among many that might be cited, this Court has sustained the lower Courts where they have examined the entire proceeding in the Land Department, including the testimony taken in a contest case, to determine whether a patent issued and involved in the suit had been obtained rightfully or not:

> Barnard *vs.* Ashley, 18 Howard, 43;
> Lytle *vs.* Arkansas, 22 Howard, 7;
> Lindsey *vs.* Hawes, 2 Black, 554;
> Carr *vs.* Fife, 156 U. S., 494.

In the case of De Cambra *vs.* Rogers, 189 U. S., 119, the action of the lower Court in sustaining a demurrer to a cross-bill in which fraud in procuring the patent by De Cambra was alleged, this Court, by Mr. Justice Brewer, called attention to the fact that no copy of the testimony given in the contest was set up as a part of the cross-complaint and said that in the absence of the record of the evidence, as "De Cambra was informed of the nature of the wrongs he alleges, was perpetrated upon him by Rogers, it may be presumed that evidence was offered by both parties upon that question and that it was decided adversely to his con-

tention." In the case at bar, the record before the Land Department is incorporated in the petition and it affirmatively appears therefrom that the matters of imposition relied upon by Estes were brought to the attention of the Department officials, but they refused to allow his allegations of such imposition to be investigated by a further hearing.

In the leading case of Johnson *vs.* Towsley, 13 Wall., 72, the whole question of the proper procedure in cases of this kind was carefully reviewed and discussed in the opinion of Mr. Justice Miller, speaking for this Court. There it was contended by able counsel for Johnson that the older cases which we have cited above had no application to cases arising subsequent to the passage of the pre-emption law of September 4, 1841, in which, for the first time, express authority was conferred upon the local officers to decide conflicting claims to any tract of public land, their decision to be subject to successive appeals to the Commissioner of the General Land Office, and the Secretary of the Interior. (See Same Case, 20 Law Ed., 485.) This Court not only did not sustain that contention, but expressly referred to those cases as supporting the jurisdiction of the Courts to review the decisions of the Land Department, after a contest, in a proper case.

IV.

A Court of Equity will grant relief against a decision of the Land Department obtained by *imposition upon the officials of the Department*, and such imposition may consist of false swearing, subornation of perjury or any other such misconduct on the part of the successful party as defeated the ends of justice.

The scope of inquiry in a case like this is much broader than is the case in a bill of review brought in a Court of Equity to review the judgment of a Court of Law. This, we take it, grows out of the fundamental principle of our Government, which assures to every citizen protection in his

property claims by declaring that he shall be denied a claim of right only upon the judgment of a *judicial* tribunal. While it is true that the law clothes certain executive officials with judicial powers in certain cases, from the necessity of the case, such powers are always spoken of as *quasi*-judicial. Such officials do not belong to the judiciary and they do not possess the machinery and equipment, nor the sanctions which belong to a Court, so that, however honest and fair-minded they may be, personally, the presumption of a full and complete examination of a case, prior to judgment, does not attach to their decisions as it does to the decision and judgment of a Court.

In the case at bar it is alleged in the petition now under examination that the officials of the Land Department were imposed upon by Timmons by the production of false testimony for use in the hearing of the contest between these two parties. The record shows that instead of producing his witnesses before the local officers in person, Timmons took the testimony of practically all of them by deposition, upon written interrogatories, and that, with two or three exceptions, these witnesses were not cross-examined. Is this such a case of "imposition" as can be made the subject of adjudication by the Courts, after the highest tribunal of the Land Department has passed upon the case?

In all the rulings of this Court on the subject, the grounds upon which the Courts will review decisions of the Land Department are spoken of as: Error of law, fraud and *imposition*. We take it, therefore, that the term "imposition" has a distinct and separate meaning from the term "fraud" or that it specifies one particular species of fraud of which a Court might not take cognizance in a suit to review the judgment of another Court.

In Lytle *vs.* Arkansas, 22 Howard, 193, this Court said:

> "Another preliminary question is presented on this Record, namely: Whether the adjudication of the

> Register and Receiver, which authorized Cloyes' heirs to enter the land, is subject to revision in the Courts of Justice, on proof, showing that the entry was obtained by fraud and *imposition of false testimony on those officers, as to settlement and cultivation.* We deem this question too well settled in the affirmative for discussion. It was so treated in the case of Cunningham *vs.* Ashley, 14 Howard, 377; again in Barnard *vs.* Ashley, 18 Howard, 43; and conclusively in the case of Garland *vs.* Wynn, 20 Howard, 8."

And again, after examining the testimony, at the close of the majority opinion, the Court said:

> "Our opinion is, that the affidavits, on which the occupant entry was founded, were untrue in fact, and a fraud on the Register and Receiver; and that Cloyes had no *bona fide* possession as tenant of the tinner's shop, within the true meaning of the Act of 1830."

It is true that the proceedings in the above case in the local office upon which the patent was issued by the General Land Office were practically *ex parte*, but the ruling is precisely in point here, in giving definition to the term "imposition" as used in the decisions of this Court. The conclusion of the officials of the Land Department in that case was obtained by the *"imposition of false testimony* upon those officers." Of course, the term does not have a different significance when used in regard to an *ex parte* case from what it has when used in regard to a case in which a contest was had as in the case at bar. (See also Lindsey *vs.* Hawes, 2 Black, 554.)

In Carr *vs.* Fife, 156 U. S., 494, already cited, objection was made in the lower Court to the admission of the record of the proceedings had in the Land Department and upon this point this Court said:

> "But here, when the plaintiff was endeavoring, by a bill in equity, to invalidate a patent by averring mis-

> conduct on the part of the officials in the contest case, a complete record of these proceedings was not only relevant, but of the utmost importance, if the incidents attending the contest in the land office were to be at all a subject of inquiry."

And in closing the opinion, it was said:

> "Of course, in the absence of fraud and *imposition,* the findings and decision of the land office cannot be reviewed as to the facts involved, and the Court below would not have been warranted in interfering with the title of the patentee and his vendees."

Other cases might be cited more or less clear upon this precise point, but we take it that these are sufficient to show that this Court recognizes the obtaining of a decision by the officials of the Land Department by means of imposition *upon them* through false swearing as sufficient ground for reviewing their action.

In the opinion of the Court below reference is made to the decision of this Court in United States *vs.* Throckmorton, 98 U. S., 61, and quotation is made from that decision, of the paragraph wherein it is held that the matter of fraud for which a bill to set aside a judgment between the same parties will be sustained, are those which are extrinsic or collateral to the matter tried and not a fraud which was in issue in the former suit. This case serves well to illustrate the distinction we are attempting to draw between a proceeding to correct or set aside a decision of the Land Department because of fraud or imposition *practiced upon the land officials,* and a bill to review the decision of a Court of competent jurisdiction. In the case cited and relied upon by the Court below, the matter that was in issue in the case as it came to this Court was a decree rendered by the District Court of the United States for Southern California affirming a decree of the Board of Commissioners of Private Land Claims

which confirmed a certain private claim set up by one Richardson. In that case appeal was taken from the Board of Commissioners to the District Court under the statute and the case tried by the Court. From the decision of the District Court affirming the conclusion of the Commissioner, further appeal was taken to this Court where, after it had remained for a year on the docket, the Attorney-General dismissed the appeal. Nearly twenty years later suit was brought by the District Attorney for Southern California in the name of the United States against Throckmorton. It will be seen at once that that case did not involve a decision of the Land Department, but a decision of a Court which had been allowed to stand unchallenged for twenty years. The very case next cited by the Court below, of Baldwin *vs.* Stark, 107 U. S., 463, sustains our contention. In the Throckmorton case it was held that the fraud or imposition on account of which relief would be granted, must be some imposition *practiced upon the unsuccessful party.* While in the very language quoted from the case of Baldwin *vs.* Stark, *supra,* in the opinion of the lower Court (Record, p. 144), it was said, in reference to a decision by the Land Department:

> "Where fraud *or imposition* has been practiced on the party interested *or on the officers of the law,* or where these latter have clearly mistaken the law of the case as applicable to the facts, Courts of Equity may give relief."

And these rulings quoted by the lower Court dispose of the suggestion that the matter which constituted the ground of complaint must be *extrinsic* or collateral to the main issue that was tried and not *intrinsic* or a matter which might have been placed in issue in the proceedings sought to be reviewed. This Court has expressly declared that relief will be granted as against an issue obtained by im-

position, through false testimony, upon the land officials. This must necessarily have relation to testimony offered in support of an issue which was being tried or which might have been tried in the tribunal rendering the decision complained of.

It is suggested in the opinion of the Court below that appellant has not alleged that he has evidence at hand to prove his allegations, but we submit that no rule of pleading requires any such allegation in a bill or complaint. The pleader, if he proceeds according to the correct rules of pleading, sets up specifically the facts upon which he relies. If those facts are sufficient to entitle him to relief, he is entitled then to a trial and the opportunity to esablish his allegations by evidence. The demurrer admits the truth of the allegations of the petition and it would be illogical in the extreme to hold, in ruling upon a demurrer which admits the truth of the allegations, that the allegations admitted to be true by the demurrer are not sufficient because the pleader has not stated that he can prove such admitted allegations.

Upon the whole case it seems clear that the amended petition presents such a case of imposition practiced upon the officials of the Land Department, which was brought to their attention, but which they refused to investigate, as to entitle appellant to a trial in a Court of Equity, and we ask that the decision below be reversed.

Respectfully submitted,

S. D. LUCKETT,

Attorney for Appellant.

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ARGUMENT OF [illegible] ON BEHALF OF A. THERIOT

H. EVERETT

Attorney for Richard A. Firmature, Appellee.

TIMES-JOURNAL PUB. CO.
OKLAHOMA CITY, OKLA.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1905

WILLIAM M. ESTES,
Appellant.

vs.

RICHARD A. TIMMONS,
Appellee.

No. 74.

ARGUMENT ON BEHALF OF RICHARD A. TIMMONS.

May it please the Court.

This is a suit in equity to declare a resulting trust on land formerly a part of the public domain, on the theory that the patent has been erroneously awarded to the appellee, it being averred that the land department should have awarded the land to the appellant.

The land in controversy is eighty acres formerly a part of the Sac & Fox Indian Reservation, in Indian Territory, now Oklahoma, and the petition discloses the fact that the land was originally entered by the appellant, William M. Estes. A contest was initiated against the entry by the appellee, Richard A. Timmons, on the ground of prior settlement, which the petition avers resulted in the cancellation of the entry of the said Estes, and the homesteading of said land by the said Timmons. No copy of the decision of the Land Department, awarding this land to Timmons, nor copy of the evidence in this first contest is plead or attached to the petition.

After this contest had been concluded and Timmons had made entry of the land, the appellant, William M. Estes, filed a contest for a preference right on the 26th day of September, 1894, alleging in effect that the appellee here, Richard A. Timmons, had entered upon, and occupied said land and other parts of said land embraced in the Sac & Fox Indian Reservation, prior to 12 o'clock noon of September 22nd, A. D., 1891, and subsequent to September 18th, A. D., 1891. The petition of the plaintiff in the court below alleges that a hearing was ordered upon this allegation, that testimony was taken in support of said charge, on behalf of Estes, and in rebuttal thereof, on behalf of Timmons, and that the Register and Receiver found

that the appellant, Estes, had not sustained his allegations by a preponderance of the evidence, and recommended a dismissal of the contest.

That thereupon, said Estes filed his motion for a new trial, based upon certain affidavits attached thereto, that this motion for a new trial was overruled and disallowed by the Register and Receiver, and that upon appeal, the Commissioner of the General Land Office affirmed the decision of the Register and Receiver, and that upon further appeal the Secretary of the Interior affirmed the decision of the Commissioner of the General Land Office, closed the case and finally issued patent to the appellee, Richard A. Timmons. The petition avers that Timmons and all his witnesses committed perjury in the trial of this case before the Land Department.

To the petition as amended, making these averments, the appellee filed a general demurrer in the court of first resort, on the ground that the petition of the plaintiff did not state facts sufficient to constitute any cause of action against the defendant.

The District Court of Pottawatomie County, sustained the demurrer and rendered decision, dismissing the case. From this decision and judgment the appellant, Estes, duly perfected an appeal to the Supreme

Court of the Territory of Oklahoma, and on June 6, 1903, the Supreme Court of the Territory of Oklahoma, handed down its decision affirming the decision of the lower court.

The appellant brings the case here on appeal.

I think that there are four reasons sufficient to justify the court in sutaining the demurrer of the appellee to the petition of the plaintiff in error:

First: The petition of the plaintiff shows a want of equity in this, that the plaintiff nowhere shows in said petition that he has earned patent to the land in controversy, by five years' residence, cultivation and improvements thereon, and he therefore appears as a mere unsuccessful contestant for a preference right of entry under the second section of the Act of May 14, 1880. It is true that in his petition in the court below, on page 11 of the printed record, he says:

"Plaintiff further alleges that he has fully complied with the homestead laws of the United States, in his settlement, residence, improvement and cultivation of said last named tract of land, and that he has fully earned a title thereto, and the same is of the value of Sixteen Thousand Dollars."

This is a mere conclusion of law, and not the statement of any fact or facts from which this or any other court could conclude that the appellant had in fact earned title to this land, or the right to a patent.

The Supreme Court of the United States in case of Bohall vs. Dilla, 114 U. S., 47-51 (Law Ed. Vol. 29, page 61) holds:

"To charge the holder of legal title to land under a patent, as trustee of another, the claimant must show himself entitled to it, and its refusal to him in consesquence of errors in the rulings of the Land Department under the law applicable to the facts found. It is not sufficient to show that there may have been error in adjudging the title to the patentee."

Of like tenor is Sparks vs. Pierce, 115th U. S., pages 408-413 (Law Ed., Vol. 29, page 429.)

The Supreme Court of the Territory of Oklahoma, specifically held in Baldwin vs. Keith, 75 Pac. Rep., page 1124, that:

"In an action to declare a resulting trust where the plaintiff claims the land under the homestead laws an essential averment of the petition, and one without

which the petition does not state a cause of action, is that the plaintiff has resided upon, cultivated and improved the land for a period of time and to an extent that upon final proof he would be entitled to the patent thereto."

The appellant, Estes, being merely an unsuccessful contestant for a preference right, can not question the judgment of the Land Department in a suit in equity, to declare a trust, and this court has so held in case of Emblen vs. Lincoln Land Co., 184 U. S., 661-663 (Law Ed. Vol. 46, page 737.) That the appellant, Estes, has no vested interest in this land is clear.

Graham vs. Great Falls Water Power & Townsite Co., 76 Pac., 808.

Second: This being a suit in equity, the plaintiff, to maintain it, must offer to do equity. Nowhere in the petition does the appellant offer to pay the appellee, Timmons, the monies expended by him in obtaining title to the tract of land, such as the purchase price, fees and commissions, paid the government, etc., nor does he make any general offer to do equity, which in general terms might satisfy this requirement of a bill in equity. In Thornton vs. Peery, 54 Pac. 649-652, the Supreme Court of the Territory of Oklahoma finds that Thornton failed to aver "that the plaintiff had ten-

dered or offered to pay the Land Office fees for final proof, paid by Peery, nor does he offer to pay same into court," and held in effect that this was a material averment to be made in order to sustain such a bill. This is consonant in principal with the decision of this court in McQuiddy vs. Ware, 20th Wall, 14 (Law. Ed. Vol. 22, page 311).

Third: The petition of the plaintiff in the court below stated no cause of action for the reason that the appellee seeks to overturn a decision of the Secretary of the Interior, and said appellee does not exhibit or set out in any way the decision complained of. This is a fatal defect to the petition. It can not be contended that the decision of the Land Department was wrong upon the evidence in the record taken at the trial before the Register and Receiver. It was conflicting, but the preponderance was with the appellee here. The contestant there, appellant here, sought a new trial on the ground that the witnesses for the defendant there, had committed perjury. This prayer for a new trial the Register and Receiver denied, the Commissioner reiterated such denial, and the Secretary of the Interior affirmed such action. In order to determine whether or not this was an error the findings and decision of the Secretary must necessarily be plead.

Myers v Berry, 41 Pac., 581.
Thornton vs. Peery, 54 Pac. 651.

In this latter case the Supreme Court of the Territory of Oklahoma says:

"And the failure to set out and plead the findings of fact made by the land officers in a contested case, renders the petition so defective as to prevent the court from determining whether there was any misapplication of the law. Pleading all the evidence does not supply this lack of material averments, but, on the contrary, is an aid to the demurrer in this cause, as it appears that there was abundant evidence other than the alleged false testimony on which a finding might have been based."

In the case at bar no affidavits were produced impeaching any of the witnesses except the one witness, John C. or J. C. Eaton. There was abundant evidence in the record as exhibited by plaintiff's petition, to warrant the Land Department in finding the issues for the appellee, Timmons, aside from the evidence alleged to be perjured.

Again, the petition nowhere alleges that the appellee, Timmons, did not file counter affidavits before

the Land Department, resisting the motion for a new trial, which satisfied the Land Department that there was no merit in the motion for a new trial.

In view of the evidence attached to the petition, showing that Boiling received a note and mortgage for Five Hundred Dollars for his testimony (see page 67 of the record), and in view of the lack of definiteness in the testimony of Adair, as shown by the cross examination of said witnesses, on pages 58, 59 and 60 of the record, the Secretary may well have held that the contestant, Estes, had not even made out a prima facie case against the appellant, Timmons, which required rebuttal or the interposition of any defense. In other words, without the decision of the Secretary of the Interior, the court would be entirely at sea in passing upon the case, and would have to go into the boundless realm of suspicion and conjecture to infer an error of law, in order to correct it.

Fourth: But the controlling reason for the sustaining of the demurrer is the one given by the Supreme Court of the Territory of Oklahoma, in their decision, to-wit: that,

"The frauds for which a bill in chancery will be sustained to set aside a judgment or decree between

the same parties rendered by a court of competent jurisdiction, or special tribunal, are frauds extrinsic or collateral to the matter tried by the first court, and not a fraud which was in issue in the former suit." (Record Pages 138 to 144).

The cases cited by the court, are to my mind conclusive of the legal proposition enunciated.

The fact inquired into by the Land Department in this original contest, was whether or not Timmons, the appellee, committed perjury in swearing that he did not enter the Sac & Fox lands prior to noon, September 22, 1891. The appellant, Estes, introduced testimony in support of this allegation, and the appellee introduced evidence in rebuttal. Appellant thereupon alleged in his motion for a new trial that a witness of Timmons' had committed perjury in swearing on behalf of Timmons. The department in the exercise of its discretion denied the motion for a new trial, and issued a patent to Timmons. The whole controversy from beginning to end involved the determination of a pure question of fact, and of fact only, and the courts have no jurisdiction to review the findings of the Land Department in such case.

In the case of United States vs. Throckmorton, 8th Otto, 61-67 (Law. Ed. Vol. 25, page 93,) the court says:

"We think these decisions establish the doctrine on which we decide the present case, namely: that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered.

"That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity were in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

In Vance et al., vs. Burbank et al., 11th Otto, 514-621 (Law. Ed. Vol. 25, page 929) this court says:

"As to the alleged fraud in the description of the compromise line, it is sufficient to say that, according to the bill, this fraud, if it in fact existed, was discovered long before the contest in the land Department, and if it had any importance in the case the amplest opportunity was given to show the error and get relief against the agreement. This was one of the matters that might have been presented to the

Land Department and, therefore, is concluded by the decision of that tribunal. Under these circumstances, it would be gross injustice to attempt to open that inquiry at this late day, in favor of Scott himself, or any one claiming under him upon his own title, irrespective of any his wife may have had."

It is to be observed that a sharp distinction is to be made between those cases, in which the showing by the successful claimant was ex parte, as in Lindsay vs. Hass, 2 Black, 554 (Law. Ed. Vol. 17, 265), and the case at bar, where both parties were present in person and by their attorneys, where the questions presented were all fully and freely investigated by the Land Department, and where the only complaint is, that the land officers believed the appellee and his witnesses and refused to believe the appellant's witnesses.

This court has fully discussd and distinguished the application of the rule enunciated in the above case of United States vs. Throckmorton and Vance et al., vs. Burbank et al., in the case of the United States vs. Minor, 114 U. S. 233-244 (Law. Ed. Vol. 29, pages 110-114).

In this latter case the court said:

"So, also, as regards the case of Vance v. Burbank

(supra), the language of the court in regard to the conclusiveness of the decision of the land office must be considered with reference to the case before it. That was not a case by the grantor, the United States, to set aside the patent, but by a party, or the heirs of a party, who had contested the right of the grantee before all the officers of the Land Department up to the Secretary of the Interior, and been defeated, and where the whole question depended on disputed facts, the evidence of which was submitted by the contestants to those officers. In such a case, where there was a full hearing, rehearing, and issues made and tried the observation of the court, "that the decision of the proper officers of the department is in the nature of a judicial determination of the matter in dispute," is well founded.

"It has been often said by this court that the land officers are a special tribunal of a quasi judicial character, and their decision on the facts before them is conclusive. And we are not now controverting the principle that where a contest between individuals, for the right to a patent for public lands, has been brought before these officers, and both parties have been represented and had a fair hearing, those parties are concluded as to all the facts thus in issue by the decision of the officers."

In a very early case the Supreme Court of the State of Minnesota, was called upon to pass upon this same proposition and in State v. Bachelder, 5th Minn., page 223 (80 American Dec., page 410) they found that:

"If the plaintiff had notice, and contested, or had an opportunity to contest and did not take advantage of it, the admission of false testimony would not be sufficient ground for relief, because, as before shown, the privileges of cross examination and impeachment are ample protection against such practices. If the plaintiff was aware of the decision of the land office at any time during the pendency of the matter therein, an application to any of the land officers in whose department the case might have been, setting forth the facts, would have procured a rehearing and detection of the fraud. If the plaintiff knew of the decision against its interest, and allowed the time to elapse in which it could have obtained relief in the same court without appealing to that tribunal, I think its negligence is a good answer to an action of this nature. There can be very little doubt that if the case was still pending in the land office, this court would turn the plaintiff over to that tribunal for relief, because it would have ample power to grant it. It is only when the plaintiff, without any default of his own, is placed in a position that the law courts can not afford him adequate redress, that this court will interfere, and

for the purpose of this investigation we must place the land department of the United States in the category of law courts."

If the contention of the appellant is correct it is hard to conceive of any case in which there was a conflict of testimony at the trial, where the defeated party could not demand a second trial on the allegation that the prevailing party's witnesses had committed perjury, and trial could succeed trial on such issue, with practically no end to the litigation.

In the case at bar there is no allegation that the plaintiff in this action did not have a fair trial before the Land Department, and the exhibits attached to the petition would have negatived any such allegation, if made, as said exhibits show that the plaintiff was present with his attorneys before the land office, at all stages of the proceedings, that he cross-examined the defendant's witnesses, introduced testimony in his own behalf, prosecuted his case by successive appeals to the department, made a motion for a new trial, and complained of the alleged perjury to the Land Department, and had a fair chance and full opportunity to assert his right to the land in question before that tribunal.

I urge that the appellant is cut off and concluded

by the decision of the Land Department on the merits, and that the decision of the court below was right and should be affirmed.

J. H. EVEREST,
Attorney for Richard A. Timmons, Appellee.

Supreme Court of the United States.

No. 74.—October Term, 1905.

William M. Estes, Appellant, vs. Richard A. Timmons. } Appeal from the Supreme Court of the Territory of Oklahoma.

[November 27, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

Bill in equity to declare appellee trustee of appellant of the south half of the southeast quarter of section 18, T. 10 N., R. 4 E., in the county of Pottawatomie County, Oklahoma. Appellee holds patent of the United States. The charge is that he obtained the patent by imposition and fraud practiced upon the Land Department. The trial court sustained a demurrer to the bill and entered a judgment dismissing it. The judgment was affirmed by the Supreme Court of the Territory. (12 Oklahoma, 537.)

The essential averments of the bill are that the land is a part of Sac and Fox reservation in the Territory of Oklahoma, which was thrown open to settlement and homestead entry under the homestead laws of the United States, September 22, 1891, under the proclamation of the President of the United States, issued September 18, 1891. (27 Stat. 989.) The appellant was qualified to make settlement and entry of said land, and immediately after 12 o'clock noon of September 22, and before any other qualified person, settled upon the land. Immediately thereafter he commenced to erect a dwelling house and established his residence thereon, and cultivated and improved the same in compliance with the homestead laws. On the 25th September he made a homestead entry thereon at the land office at Oklahoma City. Appellee filed an affidavit contesting the entry, in which he falsely and fraudulently alleged that he made settlement on the land immediately after 12 o'clock noon of September 22, 1891, and prior to appellant. The contest came on for hearing on the fifth of July, 1892, and after hearing the register and receiver of the local land office held that appellee was the prior settler, and appellant's entry was canceled and appellee was allowed to enter the land May 21, 1894. On the 26th of September, 1894, appellant filed an affidavit of contest against appellee and his entry, alleging that appellee was not qualified to make entry for the reason that he entered upon and occupied the land and other parts of the reservation prior to noon of the 22d day of September, 1891, and after September 18, 1891. The contest was heard and the land officers

found adversely to the contention. This ruling was affirmed successively by the Commissioner of the General Land Office and the Secretary of the Interior, and patent issued to the appellee. The appellant alleges that, upon the hearing and trial before the register and receiver, appellee "wilfully, intentionally and fraudulently, intending to deceive and mislead and misinform said register and receiver, procured and introduced the testimony of witnesses, W. L. Hartman, Clarence Hartman, Sam Cole, David L. Timmons, John Eaton and H. W. Darrow, who, at the instigation and procurement of the said defendant (appellee), testified before said register and receiver, in substance and effect, that the said defendant did not enter upon or occupy any of said lands so opened to settlement as aforesaid before 12 o'clock noon of September 22, A. D. 1891, and subsequent to September 18, A. D. 1891, and to the effect that they were with said defendant during said period and all of the time; which said testimony was false, and known by said defendant to be false when he procured and introduced the same." The appellant also alleges that the Commissioner and Secretary of the Interior were deceived and misled as to the facts in the case by said false and fraudulent testimony.

An amendment to the bill, filed by permission of the trial court, alleges that after testimony was taken in the contest, and before any decision had been rendered by the register and receiver, appellant filed a motion to reopen the hearing in said contest, and that he be allowed to introduce further testimony. The motion was overruled, and a motion was then made for a new trial. Both motions were supported by affidavits, and it is alleged that the register and receiver were influenced to overrule the motions and were deceived by the false and fraudulent testimony of appellee and his witnesses, and that said officers misconstrued and misapplied the law, in that the rules and practice of the Land Department require in all cases where fraud or perjury has been committed in any hearing the same shall be reopened or a new trial granted, when such fact is shown to the office or department where pending, regardless of technicalities. A like allegation is made in regard to the ruling of the Commissioner of the General Land Office and the Secretary of the Interior.

One of the affidavits attached to the motions was that of John Eaton, a witness in the contest proceedings for appellee, who testified to the settlement of the latter upon the land on the 22d day of September, 1891, after the opening of the reservation. Eaton states in his affidavit that he made his deposition by inducement of appellee and while he, Eaton, was intoxicated, and coming to reflect upon the injury he had done, he voluntarily reveals his perjury. He also states that he was not in Oklahoma on the 22d of September, but was in Kentucky, arriving there about the 15th or 16th of September. The affidavits of his brother and nephew corroborate his statement. There is an affidavit of one of the

attorneys for appellant that he had been informed before the hearing of the contest by appellant that one George Stratton knew and had sworn in an affidavit, supporting appellant's affidavit of contest, that he was with appellee on the land in controversy on the 22d day of September, 1891, and was told by appellee that he had been on the reservation before it was opened. Stratton was written to, the affidavit states, to appear at the hearing, but did not appear. The affiant tried to see Stratton, but was prevented by inclement weather, but read his affidavit to him through the telephone, between the town of Wewoka and his residence. He replied that the affidavit was true. He, however, refused to come to town on account of the weather, and the notary refused to go to Stratton's for the same reason. It was stated that Stratton could not be communicated with earlier. No date is given of the communication with Stratton. The affidavit is dated March 4, 1899. The officers of the Land Department held the showing insufficient.

The contention of the appellant is that the Land Department was imposed upon and that this imposition constitutes a ground of review of its decision by the courts. *Garland* v. *Wynn*, (20 How. 5;) *Barnard* v. *Ashley*, (18 How. 43;) *Lytle* v. *Arkansas*, (22 How. 7;) *Lindsay* v. *Hawes*, (2 Black. 554;) *Carr* v. *Fife*, (156 U. S. 494;) *De Cambra* v. *Rogers*, (189 U. S. 119,) are relied on to support the contention.

Appellant, distinguishing between fraud and imposition practiced by a party upon the Land Department, makes the latter a ground of jurisdiction in the courts. His case demands this, as no fraud was practiced upon him to prevent him from fully presenting his case. He admits that a finding of facts upon contradictory testimony is conclusive, not only in the Land Department, but upon the courts. It is, however, in effect, contended that if perjury can or shall be imputed to the witnesses the character of the decision changes and becomes reviewable, and this not in an *ex parte* proceeding, but in a contested proceeding, where everything was open and took place upon notice. No case justifies this extreme view. It is certainly not called for by the facts of the case at bar. The land was thrown open to entry on the 22d day of September, 1891. Appellant made an entry and appellee contested it. The contest came on for hearing July, 1892, and decision rendered in 1894. Appellee then made entry and appellant instituted a contest. After some preliminary steps, and by consent of the parties, the case was set for hearing June 10, 1898. There was a continuance until September 12, and another until the 29th, both at the instance of appellant. The case was closed October 28. Motion to reopen the case was made January 27, 1899. Five witnesses besides Eaton and appellee testified to the latter's qualification to enter the land. At the hearing, October 12, 1898, the divorced wife of Eaton testified on behalf of appellant that she knew of the opening of the Sac and Fox reservation

for settlement, and at that time she and Eaton were on the way to Kentucky, having started in July, 1891. The attorney for the appellant, in the affidavits referred to, excused himself for not having moved for a continuance of the hearing after this testimony was given, on the ground that he could not give the names and residence of the witnesses by whom Eaton's presence in Kentucky could be proven, as required by rule 24, for the reason that the witness had informed him she did not know any person who would be likely to know the date other than the brother and relatives of Eaton, and they would not testify without his consent. He gave as another reason that he was fearful if he disclosed the fact that he was seeking evidence in Kentucky Eaton would flee the country, and, as appellee had sought to confuse and conceal the identity of Eaton, the flight of the latter would make the evidence of no utility to appellant. In view of this statement of the proceedings how can it be said imposition was practiced upon the Land Department? A great deal of the testimony was taken in the presence of the register and receiver. They as officers, given by law the duty and function of judgment, passed upon the weight of the evidence, its contradictions and the imputations to which it and the witnesses who gave it were subject. They exercised a like judgment upon the new testimony which was submitted on the motions to reopen and for new trial, upon the diligence in procuring it and its value upon the issue between the parties. They considered it and decided against it. They exercised the judgment which the law invested them with power to make. Their function would be useless if it did not extend that far, and every decision they should make could be subjected to review by the courts by a charge of perjury against a witness. Against such power of review the decisions are clear. (*Vance* v. *Burbank*, 101 U. S. 514; *United States* v. *Minor*, 114 U. S. 233; *Lee* v. *Johnson*, 116 U. S. 48; *United States* v. *Throckmorton*, 98 U. S. 61.)

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.